

~~THE FORTY EIGHT~~
**The fyrete dy-
loge in Englyſc**

~~ſhe/with newe addycyons.~~



Here after fo
loweth the fyrete Dyaloge in
Englysshē/bytwyxt a Doc-
toure of Dyuyntyte/and a
Student in the Lawes
of Englāde.of the groundes of
the sayd Lawes, and of con-
scyence/newly correctyd;
and eft sones Enpryn-
ted: with newe
addycyons.

By Christopher St Germaine Student of the
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CThe introductyon. folio.ii.



Doctoure of dyuynytie that
was of great acquayntaunce / and famyliaertie with
a Student in the Lawes of
Englante sayde thus vnto
 hym / I haue had great desyre of lōge tyme
 to knoode wchec upon the lawe of Englan-
 de is grounded. But bycause moche parte of
 the lawe of Englāde is wryten in the fren-
 che tonge / Therfore I can not through my
 ne oddne studye atteygnye to the knowlege
 therof: for in that tonge I am no thyng exp-
 perte. And bycause I haue alwayes foun-
 de the a faythfull frende to me in all my bu-
 synes: Therfore I am holde to come to the
 before any other to know thy mynde what
 be the very groundes of the lawe of Eng-
 lande as thou thynkest. **C**Student) that
 Wolde aske a great leasure / and it is also a/
 bouc my cūnyngē to do it. Neuerthelesse y^t
 thou shalst not thynke that I wold wylful-
 ly refuse to fulfyll thy desyre: I shall with
 good wyl do that in me is to satyffye thy
 mynde / but I pray the that thou wylte syr-
 ste she we me somwhat of other lawes that
 pertayne most to this mater: and that Doc-
 tordes treate of howe lawes haue bygon.

Dyaloge.

a.ii.

The fyfte

And then I wylt gladdly shewe the as me
thynketh what be the groudes of the lawe
of Englaunde. (Doctor) I wylt with
good wyl do as thou sayste: wherfore thou
shalt understande that Doctours treate of
four lawes / the whiche as me semyth per-
rayne moste to this mater. The fyfte is the
lawe eternall. The seconde is the lawe of
nature of reasonable creature / the whiche as
I haue hatde saye is called by them that be
lernyd in the lawe of Englaunde the lawe of
reason. The thyrde is the lawe of god. The
fourth is the lawe of man. And therfore I
wyl fyfte treate of the lawe eternall.

C Of the lawe eternall.

The fyfte Chapitre.



Doctor syke as ther is in
euery artysyner a reason of
suche thynges as are to be
made by his crafte / so syke
wyse it behoueth that i eu-
ry gouernour there be a rea-
son & a fore syght in the gouernour of suche
thynges as shall be ordetyd & done by hym:
to them that he hath the gouernauce of. And

for as moche as almyghtye god is the creature and maker of all creatures / to the whiche he is compared as a workeman to his worke. And is also the gouernour of all dedes & mouynges that be founde in any creature. Therfore as the reason of the wysdom of god in as moche as creatures be created by hym hath the reason & foresyght of all cratfes & warkes that haue ben or shal be / so the reason of the wysdom of god mouynge all thynges by hym made to a good ende / opteyneth the name & reason of a lawde / and that is called the lawde eternall. And this lawde eternall is called the fyriste lawde / and it is well called the fyriste / for it was byfore all other lawdes. And all other lawdes be derived of it / wherupon seynt Augustyn sayth in his fyriste booke of the arbytrement that in temporall lawdes no thyngis is ryght wyligne lawful / but that the people haue derayured to them out of the lawde eternall. Wherfore every man hath ryght & tytyle to haue that he haile ryght wyllyng of the ryght wyse Iugement of the fyriste reason / whiche is the lawde eternall. ¶ Student / but howde may this lawde eternall be knowen / for as the apostle wryteth in the v. chapytre of his fyre Dialoge.

The fyriste
ste epystle to the Corinthytes. Que sunt dei
nemo scit nisi spiritus dei. That is to say no
man knoweth what is in god / but the spys
rite of god / wherfore it semeth that he ope/
nyth his mouth in to heuen that attempteth
to know it. **D**octorure) this lawe eternall
no man may knowe as it is in it selfe / but
only blesseyd soules that se god face to face /
but almyghty god of his goodnes sheweth
of it as moche to his creatures as is necessa/
rye for them / for els god shuld bynde his cre/
atures to a thyngc impossyble: whiche may
in no wyse be thought in hym. Therfore it
is to understande that thre maner of wayes
almyghtye god maketh this lawe eternall
knowen to his creatures resonable. Fyrste
by the lyght of naturall reason. Seconde by
heuenly reuelacion. Thirde by the ordre of
a prynce: or of any other secundarie governo/
that hath power to bynde his subgettes to a
lawe. And whan the lawe eternall or the
wyll of god is knownen to his creatures re/
sonable by the lyght of naturall understanda/
unge / or by the lyght of naturall reason /
then it is called the lawe of reason. And
whan it is shewed by heuenly reuelacion in
suche maner as hereafter shall appere / then

it is called the lawe of god. And when it is shewed unto hym by the ordre of a prynce/ or of any other secundarye gouernour that hath power to set a lawe vpon his subiectes/ then it is called the lawe of man: though orygynallye it be made of god / for lawes made by man / that hathe receyued thereto power of god be made by god. Therfore the sayd thre lawes:that is to saye / the lawe of reason / the lawe of god / & the lawe of man the whiche haue seuerall names after the manner as they be shewed to man / be called in god one lawe eternall. And this is the lawe of whom it is wrytten. Proverbiuum octauo / Where it is sayd Per me reges regnant et legum conditores iusta discernunt: that is to say / by me kynges Reygn / and makers of lawes desererne the trewth. And this suffyceth for this tyme of the lawe eternall.

COf the lawe of reason / the whiche by Doctours is called the lawe of nature of resonable creature. The.ii. Chapit.

Doctoure) Syrste it is to be understande / that the lawe of nature maye be consideryd in two maners / that is to saye /

The seconde

generally and specyally / wher it is consyderyd generally / then it is referryd to all creatures / as well resonable as vniresonables / for all vnireasonable creatures lyue vnder a certayne rewle to them gyuen by nature / necessarye for them to the conseruacion of theyr beyng / but of this lawe it is not our intent to treate at this tyme . The lawe of nature specyally consyderyd : whiche is also called the lawe of reason pertayneth oonly to creatures resonable that is man / whiche is crete to the ymage of god . And this lawe ought to be kept as well amonge Iudees & gentyls / as amonge ethynien men . And this lawe is alway good & ryght wyse syryng & enclynyng a man to good / & abhortyng euyl : & as to the orderyng of the dedes of man it is referryd before the lawe of god . And it is wryten i the herte of euery man techynge hym what is to be don & what is to be fled . And bycause it is wryten in the herte / therfore it may not be put a waye / ne it is never chaungable by no dyuersite of place ne tyme . And therfore agaynst this lawe prescrition statute nor custome may not preuayle / and if any be brought in agaynst it they be no prescriptyonis statutes nor customes /

but thyngs vnyt / & agaynst iustyce. And al
other lawes as wel the lawes of god / as to
the actis of me as other be grouded therupon.
CStudent) syth the lawe of reason is wry-
ten in the herte of euery man / as thou haste
sayd byfore techyng hym what is to be don
and what is to be fled / and the which thou
sayste maye never be put oute of the herte /
what nedyd it then to haue any other lawe
brought in to ordre the actis and dedes of the
people. **D**octor) though the lawe of re-
ason maye not be chaunged nor hollye put
away : neuerthesyis byfore the lawe wryten
it was greatly lette and blynded by euyll
customes & by many synnes of the people be-
syde the orygynall synne / in so moche that
it myght hardly be discernyd what was ry-
ght wyse and what was unryght wyse / &
what good and what euyll / wherfore it
was necessarye for the good ordre of the peo-
ple to haue many thyngs addid to the lawe
of reason as wel by the Churche: as by sev-
erall prynces accordyng to the maners of the
countre and of the people / wher such addi-
cyons shuld be exercysed. And this lawe
of reason dyfferyth fro the lawe of god in
two maners / for the lawe of god is gauen

The seconde

by reuelacyon of god / and this lawe is gye
uen by a naturall syght of vnderstandinge
And also the lawe of god orderyth a man
of it selfe by a nyghe waye to the felycyte
that euere shall endure. And the lawe of rea-
son orderyth a man to the felycyte of this
lyfe. ¶ Student) but what be tho thynges
that the lawe of reason techeþ to be done /
and what to be fled / I pray the shewe me.
¶ Doctoure) the law of reason techeþ that
good is to be loued / and euyll is to be fled /
Also that thou shalte do to another y^e thou
woldest another shuld do to the / also y^e we
may do no thyng agaynst trouþ. Also that
a man muste lyue peacefully with other.
That iustyce is to be don to euery man: and
that wronge is not to be done to any man.
And also that a trespasser is worthy to be
punysshed and such other / of the whiche fo-
loweth dyuers other secundarye comande-
mentes / the whiche be as necessarie conclu-
sions decryued of the fyriste / as of that com-
mandement that good is to be belouyd it fo-
loweth that a man shall loue his benefac-
tor: for a benefactor i that he is a benefac-
tor includeth in hym a treason of goodnes
for cl^e he ought not to be called a bñfacto^r/

that is to say a good doer: but an evyl doer.
And so in that he is a benefactour / he is to
be belouyd in all tymes / and in all places.
And this lawe also sufferyth many thynges
to be done / as that it is lawfull to put
awaye force with force. And that it is law
full for euery man to defende hym self and
his goodes agaynst an unlawfull powre.
And this lawe renneth with euery mannes
lawe / and also with the lawe of god as to
the dedes of man / & muste be alwayes kept
and obseruyd / & shall alway declare what
ought to folow upon the generall rules
of the lawe of man / & shall restrayne them
yf they be in any thyng contrarie vnto it.
And here it is to be vnderstode / that after
some men / that lawe wherby all thynges
were in common was never of the lawe of rea
son / but onely in the tyme of extreme necessi
tate. For they saye that the lawe of reason
may not be chaunged / but they say it is evy
dent that y^e lawe wherby all thyngis shuld
be in common is chaunged / wherfore they con
clude that it was never the lawe of reason.

¶ Of the lawe of god.

The. iii. Chapytre.

Dyaloge.

6. ii.

The thirde

Doctoure the lawe of god is a certayne lawe gyuen by reue/
lacyon to reasonable creature
she wyng hym the wyl of god
wyllynge /that creature reaso/
nable to be bounde to do a thyng or not to
do it for optaynyng of the felycyte eternall
And it is sayde for the optaynyng of the
felycyte eternall to exclude the lawes she
wed by reuelacion of god for the politycall
reule of the people the whiche be called Ju/
dycyals:for a lawe is not ppricly called the
law of god bycause it was shewyd by reue/
lacion of god /but also bycause it drectyth
a man by the nexte waye to the felycyte
eternall as ben the lawes of the olde Testa/
ment that be called morals / & the lawe of
the Euangelystes:the whiche were shewyd
in moch more excent maner:then the law
of the olde Testament was:for that was
shewyd by the medyacyon of an Angell
But the lawe of the Euangelyst was shew/
yd by the medyacyon of our lord Ihesu
criste god & man/and the lawe of god is al/
way ryght wyse and iuste / for it is made &
gyuen after the wyl of god. And therfore
all actes and dedes of man be called ryght/

Wyse & iuste when they be done accordyngē
to the lawe of god and be cōformable to it.
Also somtyme a lawe made by man: is cal-
led the lawe of god / As when a lawe tas-
keth his pryncypall grounde vpon the lawe
of god / and is made for the declaracyon or
cōseruacyon of the fayth / and to put a way
heresyes as dyuers lawes Cannons / and
also dyuers lawes made by the common
people somtyme doo. The whiche therfo-
re are rather to be called the lawe of god/
then the lawe of man. Yet neuerthelesse all
the lawes Canon be not the lawes of god.
For many of them be made only for the po-
lytycall rewle and conuertacyon of the peo-
ple / Wherupon John Betson i the treatyse
of the spyrituell lyfe of the soule the secoude
Lesson / & the thirde corollary sayth thus al
the canōs of popes nor theyr deccres / be not
the lawe of god. For many of them be ma-
de onely for the politycall conuertacyon of
the people . And yf any man wyl sayc be
not all the goodis of the Churche spyrituell
For they bylonge to the spyritualltie and
leed to the spyritualltie / We answeare that in
the hole politycall conuertacyon of the peo-
ple / there be some specyally deputed and de-

The thirde

dycate to the seruice of god / the whiche most
specially as by an excellencie are called spy-
tyuell men as religyous men are. And other
though they walke in the way of god. Yet
neuertheles bycause theyr offyce is most spe-
cially to be occupied aboute such thynges
as pertaine to the comon welth / and to the
good ordre of the people / they be therfore ca-
lled seuler men or lay men / neuertheles the
goodes of the fyfte may no more be called
spytuell / the the goodes of the other for they
be thynges mere temporall and kepyng the
body as they doo in the other . And by lyke
reason lawes made for the polycall ordyn-
of the Churche be called many tyme spyp-
tuell / or the lawes of god. Neuertheles it is
but unproperly : and other be called Lypule
or the lawe of man. And in this poynt ma-
ny be oft tymes deceyued / and also deceyued
other the whiche Juge tho thynges to be spy-
tyuell / the whiche all men knowe he thynges
materiall & carnall. Thyse be the wor-
des of John Werson in the place allegyd be-
yfore. Furthermore besyde the lawe of rea-
son and the lawe of man it was necessary to
haue the lawe of god for fourte reasons.
The fyfte bycause man is ordyned to the go-

most ende of eternal felicitie the which excedyth
spyn the proporcion & facultye of manes power.
Other Therfore it was necessarye that besyde the
law of reason & the law of man: he shuld be
directyd to his ende by a law made of god.
Seconde for as moch as for the vncertainte
of mannes Judge specially of thys ptyculer
cause a seldom fallynge. It hapenyth oft tymes
sitho folowe dyuers Jugementes of dyuers
illed men / and also dyuersities of lawes / & ther
fore to the entent that a man withoutt any
dought may knowe what he shuld do / and
what he shulde not do / It was necessarye
that he shuld be directyd in all his dedes by
a lawe heuenly gyuen by god / the whiche
is so apparant that no man mayswatue
it selfe to it as is the lawe of god. Thysdyl man
may only make a lawe of such thynges as
he may Juge vpon / and the Jugement of
man may not be of inward thynges / but
only of outward thynges / & neuerthelesse
it belongeth to perfecyon that a man be
well orderyd in both / that is to say as well
inward as outward. Therfore it was ne
cessary to haue the lawe of god / the whiche
shuld ordre a man as well of inward thyng
as of outward thyngs. The fourth is by

The fourth
cause as saynt Augustyn sayth in the fyfthe
boke of his arbytment / the lawe of man
may not punysshē alle offences: for ys all of
fencē shuld be punysshēd / the comon welth
shuld be hurte as it is of contracles / for it can
not be auoydyd / but that as longe as con-
tractes be sufferyd many offences shall so-
lowe therby / & yet they be sufferyd for the
comon welthe . And therfore that no culpe
shuld be unpunysshēd / it was necessary to
haue the lawe of god that shulde leue no e-
uylle unpunysshēd.

COf the lawe of man.
The fourth Chapytre.



Octoure) The lawe of man
the whiche somtyme is cal-
led the lawe posityue is de-
stroyed by reason as a thir-
ge whiche is necessaryly &
probably folowyng of the
lawe of reason / & of the lawe of god. And
that is called probable y^t apperith to many
& specyally to wyse men to be trewe . And
therfore in euery lawe posityue well made
is somewhat of the lawe of reason / and of

the lawe of god: and to discerne the lawe of god & the lawe of reason fro the lawe posytyue is very harde / & though it be harde yet it is moche necessary in euery morall doctryne / and in all lawes made for the comon welth. And that the law of man be Juste & ryght wyse / two thynges be necessary / that is to saye / Wysdome & auctorytie / Wyisdome that he may Juge after reason / what is to be done for the comynalstie / and what is expedient for a peasyble conuerſacyon / and necessary sustentacyon of them / Auctorytie that he haue auctorytie to make lawes. For the lawe is named of / Ligate: that is to say to bynde . But the sentence of a wyse man doth not bynde the comynalstic yf he haue no rewle ouer theym . Also to euery good lawe be requyred thysc proprieties: that is to say that it be honest / right wyse / possyble in it selfe / & after the custome of the countree / conuenyent for the place and tyme / necessa ry / profytale / and also manyfest that it be not capious by any darke sentence ne myte with any priuate welth / but all made for the comon welth. And after saynt Byrgret in the fourth boke in the E. xxix. chappytre / euery good lawe is ordeyned to the helth of

Dyaloge.

c.l.

The fourth

the soule / & to the fulfyllyng of the lawdes
of god: and to induce the people to flye euyl
desyres & to do good warkes. Also as the car
dynall of Lamer wryteth what so euer is
ryghtwyse in the lawde of man is ryghtwy
se in the lawde of god / for every mannes law
must be consonant to the lawde of god. And
therfore the lawdes of prynces / the comauis
dementes of prelates / the statutes of comys
naries / ne yet the ordyuinance of the L hirs
che is not ryghtwyse nor oblygatorye / but
it be consonant to the lawde of god. And of
suche a lawde of man that is consonant to
the lawd of god / it apperyth who hath right
to landes & goodcs / and who not: for what
so euer a man hath by suche lawdes of man
he hath ryghtwyslyc. And what so euer is
had agaynst suche lawdes is vnyghtwyss
lye had. For lawdes of man not contrary to
the lawde of god / nor to the lawde of reason
muste be obseruyd in the lawde of the louse /
and he that dyspyseth them dyspyseth god &
resyseth god. And furthermore as Gracis
an sayth bycause euyl men ferre to offend
for ferre of payne. Therfore it was necessas
rye that dyuers paynes shulde be ordyned
for dyuers offences as physycyonis ordynes

He dyuers remedyes for seuerall dysseases.
And suche paynes be ordeyned by the ma-
sters of lawes after the necessytie of the ty-
me / and after the dysposycion of the people.
And though that lawe that ordeyneth su-
che paynes hath therby a consermytie to the
lawe of god: for that the lawe of god coman-
deth that the people shall take awaie euylle
from amonge them selfe / yet they belonge
not so moche to the lawe of god / but y^e other
paynes standyng the fyfste prynciples my-
ghte be ordayneid and appoynted / and ther-
fore that is the lawe that is called most pro-
prelye the lawe posytyue and the lawe of
man. And the Phylosopher sayth i the thys-
de booke of his Etykes / that the entent of a
maker of a lawe is to make the people good
and to brynge them to vertue. And though
I haue somwhat in a generalytie shewyd
the whetupon the lawe of Englade is groun-
dyd. For of necessytie it must be groundyd
of the sayd lawes / that is to say of the lawe
eternall / of the lawe of reason / and of the
lawe of god. Neuerthelesse I praye the shew
me more speyally whetupon it is groun-
dyd as thou thyngest / as thou before haste
promysed to do. ¶ Student) I wyl with
Dyaloge.

The fyfth
good wyl doo therin that lyeth in me / for
thou hast shewyd me a ryght playne and a
strayte waye thereto . Therfore thou shalte
Understante that the lawe of Englannde is
groundyd vpon syue pryncipall groundes .
Fyrste it is groundyd on the lawe of rea-
son . Seconde on the lawe of god . Thyrdsy
on dyuers generall customes of the realme .
Fourthly of dyuers prynciples that be cal-
led maximes . Fyftly on dyuers particuler
customes . Sixtly on dyuers status made
in Parlyamente by the kyng & by the co-
mon Councell of the realme / of whiche grou-
ndes I shall speke by ordre as they be reher-
cyd byfore / & fyfthe of the lawe of reaso:).

COf the fyfth grounde of the lawe
of Englannde . The . V . Chapytre .



Ludent) The fyfth groun-
de of the lawe of Englannde
is the lawe of reason / wher
of thou hast treatyd byfore
in the seconde chapytre / the
whiche is kepte in this realme as it is in all
other realmes & as of necessytie it muste ne-
des be as thou hast said byfore . (Doctor)

Bult. I wolle knowe what is called the lawe of nature after the lawes of Englante.

(Student) It is not vsed amonge them that be lernyd in the lawes of Englante to reason what thyng is comandyd or prohibyted by the lawe of nature and what not: but all the resonynge in that behalfe is vnder this maner: as when any thyng is groudyd vpon the lawe of nature: they say that reason wylle that such a thyng be don / and yf it be prohibyte by the lawe of nature.

They say it is agaynst reason or that reason wylle not suffre that it be don. (Doctoure)

Then I pray the shew me what they that be lernyd in the lawes of the realme holde to be comandyd or prohibyte by the lawe of nature vnder such tyme and after such maner as is vsed amongest theym that be lernyd in the sayde lawes. (Student)

There be put by them that be lernyd in the lawes of Englante two degrees of the lawe of reason / that is to say / the lawe of reason prymarie / and the lawe of reason secundarye / by the lawe of reason Prymarie be prohibyte in the lawes of Englante murther that is the dethe of hym that is Innocent / perjurye / dysceytle / brekyng of the peace (etiam)

Dyaloge.

c.iii.

The fyfth

ny other lyke. And by the same law also it
is lawfull for a man to defende hym selfe
agaynst an vnuste powre so he kepe de we
circumstaunce. And also yf any promyse be
made by manas to the body it is by the law
of treason voyde in the lawes of Englāde.
The other is called the lawe of a secundary
reasoñ / the whiche is delyued in to two
braunches / that is to say in to the lawe of a
secundarye reason generall. And in to a
lawe of a secundarye reason pertyuler. The
lawe of a secundarye reason generall is grou
dyd and deryued of that generall lawe or
generall custome of ppretye wherby goodes
mouable and Unmouable be brought in to
a certayne ppretye / so that euery man may
knowe his owne thyng. And by this braunc
che be prohibyted in the lawes of Englan
de dysseasons / trespass in landes & goodes
escues thefe Unlawfull withholdyng of
another mannes goodes & suche other. And
by the same lawe it is a groude i the lawes
of Englāde that satysfaccyon must be ma
de for a trespass / & that restytucyon muste
made of such goodes as one man hath thare
by songe to another man / that dettes muste
by payde: conuenantes fulfilled and suche

other. And bycause dyssasons / trespassse in
landes and goodes: thefte & such other had
not ben knowden yf the lawe of propretye
had not ben ordyned. Therfore all thyngs
that be dyriuyed by reason out of the sayde
lawe of propretye / be called the lawe of rea-
son secundarye generall / for that lawe of
propretye is generally kept in all countreys.
The lawe of reason secundarye pertyculer
is that lawe that is dyriuyed vpon dyuers
customes general and pertyculer and of dy-
uers maypymes & statutes ordeyned in this
realme. And it is called the lawe of reason
secundarye pertyculer bycause that reason
in that case is deryuyed of such a lawe that
is only holden for lawe in this realme / &
in none other realme.

C Addycyon.

(Doctoure) I pray the shew me some spe-
ciall case of suche lawe of reason secunda-
rye pertyculer for an example. (Student)
There is a lawe in Englande / whiche is a
lawe of custome yf a man take a dystre
lawefullly that he shall put it in a pounde o/
uerte there to remayne tyll he be satyffyd
of that he dystreyned for. And then theru/
pon may be asked this questyon that yf the

The fyfth

Beestes dye in pounde for lacke of meate / at
Whose peryll dye they / Whether dye they at
the peryll of hym that dystreyned oþer of hym
that oþereth the beestes. **D**octoure) Yf the
laþe be as thou sayste and then a man for
a iuste cause takyth a dystres and putteth it
in pounde ouerte and no laþe compellyth
hym that dystreyneth to gyue them meate /
then it semyth of reason that yf the dystres
dye in pounde for lacke of meate / that it dy-
eth at the peryll of hym that oþereth the bee-
stes / not of hym that dystreyned / for i hym
that dystreyned there can be assygned noo
defaute / but in the other may be assygned a
defaute bycause the rente was vnpayde.

Student) thou haste gyuen a treþe Ju-
gement and who hath taugheþ the to do so /
but reason dyriuyed of the sayd general cu-
stome. And the laþe is so full of suche secul-
darie reasons dyriuyed out of the generall
customes and maymynes of the realme that
some men haue affirmyd that all the laþe
of the realme is the laþe of reason: but that
can not be prouyd as me semyth as I haue
partly shewyd before and more fully wylle
shewe after. And it is not moche vþsyd iþ the
laþes of Englanþe to reason what laþe

is grouyng upon the law of the fyfte reaso
prymary/or of the law of reason secundarye
for they be most comonly openly knowen of
them self/but for the knowledge of the law
of reason secundarye is greater dyffycultye/
& therfore therin depedyth moche the maner
and forme of argumentes in the lawdes of
Englaunde. And it is to be noted that al the
detyuyenge of reason in the lawdes of Eng
launde procedyeth of the fyfte prynctyple of
the lawde or of some thyng that is detyup
ed of them. And therfore no man may right
wysly Juge ne grouyng reason in the law
des of Englaunde yf he be ygnoraunt in the
fyfte prynctyple. Also all byrdes/fowles/
Wylde beestes as beestes of forestes & war
ren and suche other be exceptyd by the law
des of Englaunde out of the sayde generall
lawde and custome of propretye. For by the
lawdes of the realme no propretye may be of
them in any person onles they be tame. Ne
uerthesesse the egges of hawkes/herons/or
suche other as buylden in the grounde of any
person/be adiuged by the sayd lawdes to be
longe to hym that oweth the grounde.

COf the seconde grounde of the lawde
of Englaunde. The. vi.chapytre.

Dyaloge.

d.i.

The syse



Ludent) The seconde
grounde of the lawe of
Englanđe is the lawe
of god / and therfore for
punyſſement of them
that offend agaynst the
law of god , it is enque
tyd in many courtes in this realme / yf any
holde any oppynnyons ſecretely or in any oſ
ther maner agaynst the crewe catholycall
ſaythe . And alſo yf any generall custome
were dyrectlye agaynst the lawe of god / or
yf any ſtatute were made dyrectly agaynst
it / as yf it were ordayneſ that noo almesſe
ſhuld be gyuen for no neceſſytie that custo
me and ſtatute were voyde . Neuertheleſſe
the ſtatute made in the .xviii. yere of kyng
Edward the thirde / wherby it is ordayneſ
that no man vnder payne of Impryſoneſ
ment ſhall gyue any almesſe to any vally
aunt beggers that may well laboure / that
they may ſo be compellyd to laboure for theyr
ſuynghe is a good ſtatute / for it obſeruyth
the intent of the lawe of god . And alſo by
auctorite of this lawe there is a grounde
in the lawes of Englanđe / that he that is
accursed ſhall maynteyne no accyon in the

Kynges courte except it be in very fewe cases so that the same excommunicacion be attyfied byforc the kynges Justyses in suche maner as the lawe of the realme hath apoynted. And by the auctoritic also of this grounde / the lawe of Englande amitteth the spirituell Jurisdycyon of dysmes and offertynge. And of all other thynges that of right bysonge vnto it. And receyueth also all lawes of the Churche deWely made and that excede not the power of them that made them / In so moche that in many cases it behouith the kynges Justyses to Judge after the lawes of the churche. (Doctor) Howe may that be that the kynges Justyses shuld Judge in the kynges courtes after the lawe of the Churche / for it semyth that the churche shuld rather gyue Iugement in suche thynges as it may make lawes of:then the kynges Justyses. (Student) What may be done in many cases / Wherof I shall for an exaple put this case. If a Wryt of ryght of Warde be broughte of the bodye &c. And the tenaunt confessyng the tenour and the nonage of the Infant / sayth y^e the infant was maryed i his aulcesters dayes &c. Wherupon. vii. m^c be sworne whiche gyue this

Dyaloge.

d.ii.

The sypte

Verdyt / that the Infante was marayd in
the syfe of his auncestre. And that the Wo-
man in the syfe of his Auncester sued a de-
uorce wherupon sentence was gyuen that
they shulde be deuorcyd / And that the heire
appelyd whiche hangyth yet vndiscussyd
prayenge the ayde of the Justyce to knowe
whether the Infante i this case shalbe sayd
marayd or not / In this case yf the lawe of
the Churche be that the sayd sentence of de-
uorce standeth in his strength & vertue vn-
tyll it be adnulld vpon the sayde appele.
Than the Infante at the deth of his aunce-
stre was unmarayd bycause the fyfste ma-
ryage was adnulld by that deuorce. And
yf the lawe of the Churche be that the sen-
tence of that deuorce standeth not in effecte
tyll it be affirmyd vpon the sayde appele/
then is the Infante yet marayd / so that the
valuc of his maryage can not belonge vn-
to the lorde. And therfore in this case Juge-
ment condycyonell shall be gyuen &c. And
in syke wyse the kynges Justyce in many
other cases shall Juge after the lawe of the
Churche syke as the spyrte. Judges must
in many cases forme theyr Jugement after
the kynges lawes. (Doctoure) Howē may

that be that the spyrtyuell Juges shuld Ju-
ge after the kynges lawes / I pray the shes
me some certayn case therof. ¶ Studēt
Though it be somwhat a dyggression fro o^r
fyrest purpose / yet I wyl not with saye thy
desyre / but wyl with good wyl put the a-
case or tōo therof / that thou mayst the bet-
ter perceyue what I meane / yf A. and B.
haue goodes Joyntly / and A. by his laste
wyl byquetheth his porcyon therin to C.
And maketh the sayde B. his executoute &
dyeth / and C. askyth the execucion of this
wyl in the spyrtyuell courte / In this case
the Juges there be bounde to Juge that wyl
to be voyde: bycause it is voyde by the law-
es of the realme. And in lyke wyse yf a man
be outlawed / and after by his wyl byque-
theth cettayn goodes to John at style / and
make his executors and dye / the kyng
seasyth the goodes and after gyueth theym
agayne to the executors / and after John
at style supyth a sytacyon out of the spyrtyu-
ell courte agaynst the executors to haue
execucion of the wyl / in this case the Juges
of the spyrtyuell courte must Juge the wyl
to be voyde as the law of the realme is that
it is. And yet there is no suche lawe of for-

The seuent
feyturte of goodes by outlagarye in the spys
tytull lawe.

COf the thyrdre grounde of the lawe
of Englande. The. viii. chapytere.



Ludent) The thyrdre groun
de of the lawe of Englande
standeth vpon dyuerse gene
rall Customes of olde tyme
vsed through all the realme:
Whiche haue ben acceptyd and approuyd by
our soueraygne lorde the kyng and his pro
genytors and all theyr subgettes. And by
cause the sayd customes be neyther agaynst
the lawe of god / no: the lawe of reason / &
haue ben alwaye taken to be good and ne
cessarie for the comon welth of all the real
me. Therfore they haue optayned the stren
gthe of a lawe / in so moche that he that doth
agaynst them doth agaynst Justyce. And
these be tho customes that proprely be called
the comon lawe. And it shall alway be de
termyned by the Justyces whether there be
any suche generall custome or not / and not
by. vii. men. And of these general customes
and of certayne pryncypes that be called

maraymes whiche also take effecte by the olde custome of the realme / as shall apperte in the chapytre nexte folowynge dependyng moste parte of the law of this realme. And therfore our soueraygne lord the kyng at his Coronacyon amonge other thynges shall syth a solempne othe / that he shal cause alle the customes of his realme faythfully to be obstruyd. [Doctor] I pray the shal me some of these generall customes. [Student] I wylle with good wylle and fyoste I shall shew the how the custome of the realme is the verye grounde of dyuers courtes in the realme / that is to say of the Chauncerye of the kynges Benche of the comon place: and the Escheker / the whiche be courtes of record bycause none may syt as Juge i tho courtes but by the kynges letters patentes. And these courtes haue dyuers auctorites wherof it is not to treate at this tyme. Other courtes there be also only groundyd by the custome of the realme: that be of moche lesse auctorite then the court before reheryd / as in eury shire within the realme there is a courte that is called the Coutye / and another that is called the Shryffes toone / and in eury maner is a courte that is called a courte ba-

The seventh

ron. And to euery fayre and market is incy-
dent a courte that is called a courte of Py-
podries. And though in some statutes is
made meneyon somtyme of the sayd courtes.
Yet neuertheles of the fyriste Instytucion of
the sayd courtes: and that suche courtes shul-
de be / there is no statute nor lawe wrytten
in the lawes of Englannde. And so all the
grounde and begynnyng of the sayd cour-
tes depende vpon the custome of the realme
the whiche custome is of so hygh auctoritic
that the sayde courtes ne theyr auctorities
may not be alteryd / ne theyr names chaun-
ged without Parlyament.

Also by the olde custome of the realme /
no man shall be taken in prysonyd dyssea-
syd nor other wyse destroyed / but he be put
to answere by the lawe of the lande: & this
custome is consermyd by the statute of Mag-
na carta the. xx vi. chapytre.

Also by the olde custome of the realme al-
men great and small shall do and receyue
Justyce in the kynges courtes / and this cu-
stome is consermyd by the statute of Marl-
bryge the fyriste chapytre.

Also by the olde custome of the realme /
the eldest sone is only heire to his auncestet

chapytre. folio. viii.

and yf there be no sonnes but daughters:then
al the daughters shalbe heire:and so it is of
sisters and other kynnes women. And yf
there be nother sone / daughter / brother / nor
sister / then shall the enheritaunce dyscende
to the nepte kynnesman or kynnes woman
of the hole blode to hym that had the enhy-
taunce of hōw many degrees so euer they be
from hym. And yf there be no heire general
nor specyall / then the lande shall eschete to
the Lordē of whom the lande is holden.

¶ Also by the olde custome of the realme/
landes shall never ascend / nor dyscende
from the sone to the father or mother / nor to
any other auncestre in the ryght lyne / but it
shall rather eschete to the lordē of the fee.

¶ Also yf an alyen haue a sone that is an
alien and after is made Denyzen / and
hath another sone / and after purchasyth la-
des and dyeth / the yonger sone shall enher-
ite as heire / and not the eldest.

¶ Also yf there be thre brethren & the myd-
lest brother purchase lades & dyeth without
heire of his body the eldest brother shal inher-
ite as heire to hym: & not the yonger brother.

¶ Also yf lande in fe symple dyscende to a
man by the pte of his father & he dyeth with

Dyaloge.

s.l.

The seuerenth
out heire of his body / then that inherytanc
ce shall dyscende to the next heire of the par
te of his father. And yf there be no suche hey
re of the parte of his father / then yf the fat
her purchasyd the landes it shall go to the
next heire of the fathers mother and not to
the nepte heires of the sonnes mother / but it
shall rather eschete to the soide of the fee: but
yf a man purchase lades to hym and to his
heires a dye withoute heire of his body as
is sayd byfore / then that lande shall dyscen
de to the next heire of the parte of his father
yf there be any / and yf not then to the next
heire of the parte of his mother.

Also yf the sone purchaseth landes in fee
and dye withoute heire of his body / the lan
de shall dyscende to his vncle and shal not
ascende to his father / but yf the father haue
a sone though he be many yeres after the
deth of the elder brother / yet that sone shall
put out his vncle and shall enjoy the lan
de as heire to his elder brother for euer.

Also by the custome of the realme the chyl
de that is borne by soi;e spouselles is bastar
de and shall not inheryte.

Also the custome of the realme is that no
manner of goodes nor catelles reall nor patr

sonell shall never go to the heire / but to the
executoures / or to the ordynarie or admys
nystratoures.

Also the husbonde shall haue all the cha
tells parsonells that his wyfe had at the
tyme of the spousells or after: and also cha
tells reall ys he ouer lyue his wyfe / but ys
he sell or gyue a day the chatells reallys &
dye by y^t sale or gyfte the intereste of the wy
fe is determinyd / & els they shal remayne to
the wyfe ys she ouer lyue her husbonde.

Also the husbonde shall haue all the inhe
rytaunce of his wyfe wherof he was seased
in dede in the ryght of his wyfe duryng the
spousells in fee or in fee tayle generall / for
cme of his lyfe / ys he haue any chyld by her
to holde as tenaunt by the curtesye of Eng
lande / & the wyfe shall haue the thyrd part
of the inheritaunce of her husbonde wher
of he was seasyd in dede or in law after the
spousells &c. but in that case the wyfe at the
deth of her husbonde must be of the age of .iv.
yere or aboue / or els she shall haue no do
wrye. **D**octoure.) what ys the husbonde at
his deth be within the age of .iv. yere. **S**tu
dēt) I suppose shē shal yet haue her do
wer. **A**lso the olde Lawe & custome of the re
Dyaloge.

The seuenth

alme is that after the deth of euery tenaunte
that holdeth his landes by knyghts seruyce
the lord shall haue the warde and maryas-
ge of the heire tyll the heire come to the age
of. xxi. yere. And yf the heire in that case be
of full age at the deth of his auncestre / then
he shall paye to his lord his relyes whiche
at the comon lawe was not certayne / but
by the statute of Magna carta / it is put in
certayn: yf is to say for euery hole knyghtes
fee to paye a. L. shyllinges. And for a hole
baronye to pay a hondred marke for relyes.
And for a hole erledom to pay a. L. pounde
and so after the rate. And yf the heire of su-
che a tenaunte be a woman / and she at the
dethe of her auncestre be within the age of.
 viii. yeres / then by the comon lawe she shal-
le haue ben in warde oonly tyll. viii. yere /
but by the statute of Westm the fyfste in su-
che case she shal be in warde tyll. xvi. yere.
And yf at the deth of her auncestre shal be of
the age of. viii. yere or aboue / she shalbe out
of warde / though the lades be holden of the
kyng. And then she shall pay relyes as an
heire male shal.

Also of landes holden in socage yf the
auncestre dye / his heire beyng within the

age of .viiiij. yetes / the nept frende of the heyr
re to whom the inheritance may not dys-
cende shal haue the warde of his body & lan-
des tyll he shall come to the age of .xiij. yes-
te / & then he may entre. And when the heyre
cometh to the age of .xxvi. yere / then the gar-
deyn shal yelde hym accompte for the pros-
fettes therof by hym receyued.

¶ Also suche an heyre in socage for his re-
lyef shal double his rent to the lorde the ye-
re folowynge the deth of his auncestre / as
yf his auncestre helde by .vii. d. cent / the heyre
in the yere folowynge shal pay that .vii. d.
for his rent / & other .vii. d. for his relyef. And
that relyef he must pay though he be within
age at the deth of his auncestre.

¶ Also there is an olde lawe and custome
in this realme that a freholde by way of fe-
fement gyfte or lease passyth not without
lyucrey of season be made vpon the lade ac-
cordynge though a dede offeffement be ther-
of made & delyueryd: but by way of surren-
die partpcion and eschaunge a frehold may
passe without lyucrey.

¶ Also yf a man make a wyl of land wher-
of he is seasyd in his demesne as of fee / that
wyl is voide / but yf it had stande in fesses

The seventh
handes it had ben good. And also in lōdon
suche a wylle is good by the custome of the
cytie yf it be into wlyd.

Also a lease for terme of yeare is but a chas-
tell in the law / & therfore it may passe with-
out any luyerey of season / but other wyse it
is of a state for terme of lyfe for that is a fre-
holde in the law / & therfore luyerey must be
made therof or els the frehold passyeth not.

Also by the olde custome of the Realme a
man may dystreyne for a rent seruyce of com-
mon ryght. And also for a rent reseruyd v-
pon a gyfte in tayle / a lease terme of lyfe / of
yeares and at Wyll / and in suche case the lord
may dystreyne the tenauntes beestes as
soon as they come vpon the grounde / but the
beestes of straungers that com in but by ma-
ner of an escape / he may not dystreyne tyll
they haue ben leuant / a couchant vpon the
grounde: but for dritte vpon an oblygacion
nor vpon a contracte / nor for accompte ne
yet for arreage of accompte / nor for no ma-
ner of trespass / reperacio[n] / nor suche other
no man may dystreyne.

Also by the olde law a custome of the re-
alme al yssues that shalbe ioyned be twy-
te partie and partie in any courte of record

Within the Realme excepte a fewe wherof
it nedith not to treate at this tyme/muste be
tryed by. viii. fre & lawfull men of the dysne
that be not of affynytie to none of the par-
ties. And in other courtz that be not of recor-
de/as in the countye/courte baron/hundred
& such other lyke / they shalbe tryed by the
othe of the partyes & not other wyse oonles
the partyes assent that it shalbe tryed by the
homage. And it is to be notyd that lordes/
barons/and all pyers of the realme be ex-
pted out of such tryalles yf they wylle/but
yf they wylle wylfully be sworne therin/
some say it is no errore. And they may yf
they wylle haue a wrytte out of the Chancery
directyd to the Shryff comandynge
hem that he shall not unpanell them vpon
no enquest. And of this that is sayd before
it appertyneth that the customes aforesayd nor
other lyke vnto them. Wherof be very ma-
ny in the lawes of Englante can not be pro-
uyd to haue the strength of a lawe only by
reason:for how may it be prouyd by reason
that the eldest sonne shal only enherite his
father & the yonger to haue no parte/or that
the husbonde shal haue the hole lande for
terme of his lyfe as tenaunt by the curtesye

The seuenth

in suche manner as byfoire appertayneth. And
that the wyfe shal haue only the thirde par-
te in the name of her doower / & that the hus-
bonde shal haue all the goodes of his wyfe
as his owne. And that yf he dye lyuyng
the wyfe / that his executors shal haue the
goodes / and not the wyfe. All these and
suche other can not be prouyd oonly by rea-
son that it shuld be so and no other wyfe al-
though they be reasonable / & that with the
custome therin vsed suffyseth in the lawe.
And a statute made agaynst suche general
customes ought to be obserued bycause they
be not merely the lawe of reason.

Also the lawe of pretaye is not the lawe
of reason / but a lawe of custome hould be it
that it is kept / and is also ryght necessarie
to be kept in all realmes & amonge all peo-
ple. And so it may be nomred amonge the
generall customes of the realme. And it is
to understande that there is no statute that
treatyeth of the begynnyng of the sayd custo-
mes: ne why they shuld be holden for lawe.
And therfore after theym that be lernyd in
the lawes of the realme: the olde custome of
the realme is the only and suffycyent aucto-
rytie to them in that behalfe. And I praye

chapytre.

folio. vii.

the shewe me what doctours holde therin/ that is to saye whether a custome oonly be suffycyent auctorite of any lawe. ¶ Doc-
toure) doctours holde that a lawe groundyd
Upon a custome is the moste suffryng lawe/
but this must be alwayes vnderstāde therin/
With that such a custome is nother contra-
rye to the lawe of reason/ nor to the law of
god. And nowe I praye the shewe me som
what of the maypymes of the lawe of Eng-
lande wherof thou hast made mencyon by
fore in the. iii. chapytre. ¶ Student) I wyl
With good wylle.

¶ Of the. iiiii. grounde of the lawe of
Englante. ¶ The. viii. chapytre.



Student) the. iiiii. grounde
of the lawe of Englante
standyth in dixit pyn-
cyples that be called in
the lawe maypimes/ the
which haue ben alway-
es taken for law in this
realme / so that it is not lawfull for none
that is lernyd to denye them / for euery one
of those maypimes is suffycyent auctorite
Dyaloge.

f.l.

The eyght

to hym selfe. And whiche is a maypyme /
Whiche not shall alway be determined by
the Juges / and not by. viii. men. And it nes-
sysh not to assygne any reason why they
were fyfste receyued for maypymes for it sus-
pyneth that they be not agaynst the lawe of
reason nor the law of god / & that they haue
alway be taken for lawe. And such mayp-
imes be not onlye holden for lawe / but also
other cases lyke vnto them / and all thyngs
that necessarly foloweth vpon the same /
as to be reduced to lyke lawe. And therfore
moste comenly there be assygned some rea-
sons or cosyderacyon why such maypimes
be resonable to the intent that other cases ly-
ke may the more conueniently be applyed
to them. And they be of the same strength &
effect in the law as statut be. And though
the generall custome of the Realme be the
strength and waraunte of the sayd may-
pimes: as they be of the gretal customes of the
realme / yet bycause the sayd generall custo-
mes be in maner knowden through the real-
me as well to them that be vnclenyd as cler-
kyd / and may syghly be had and knowden
and that with lytell stodye. And the sayde
maypimes be onlye knowden in the kynges

contes or amonge them that take great studie in the lawe of the realme / and amonge se we other persones. Therfore they be set in this wrytynge for seuerall groundes and he that listeth may so accompte them / or yf he wyl he may take them for one grounde after his pleasure / of whiche maypymes I shal hereafter shewe the parte.

Clystic there is a maypyme that Escuage Uncertayne makyth knyghtes seruyce.

CAlso there is another maypyme that Escuage certayne makyth socage.

CAlso that he that holdeth by castell gare / holdeth by knyghtes seruyce / but he holdeth not by escuage / And that he that holdeth by xv. shyllinges to the garder of a castell holdeth by socage.

CAlso there is a maypyme that a dyfcent maketh a waye an entre.

CAlso that no prescypcyon in landes maketh a ryght.

CAlso that a prescypcyon of rent & of profytes apriendre out of lade maketh a ryght.

CAlso that the symptacyon of a prescypcyon generally taken is from the tyme that no manes mynde remayneth to the contrarie.

CAlso that assygnes may be made vpon Dyaloge.

The eyght

Landes gauen in fee for terme of lyfe/or for
terme of yeris though no mencyon be made
of assynges / & the same lawdes is of a rent
that is grauntyd / but other wyse it is of a
Warantye and of a couenaunte.

Also that a condycyon to auoyde a fres
holde can not be pleasyd without dede/but
to auoyde a gyft of a chatell it may be plea
syd without dede.

Also that a release or a cōfymacyon ma
de by hym that at the tyme of the release or
confymacyon made had no ryght is vays
de in the lawde / though a right come to hym
after except it be with warantye / and then
it shall barre hym of all ryght that he shall
haue after the warantye made.

Also that a ryght or tytle of accyon that
only dependyth in accyon can not be gyuen
nor graunted to none other but only to the te
naunt of the grounde / or to hym that hath the
reuercyon or remayndrie of the same lande.

Also that in an accyon of dette vpon a
contracte the deff^r maye wage his lawdes
but other wyse it is vpon a lease of landes
for terme of yeris or at Wyll.

Also thatys an exgent i case offelonye
be awardeyd agaynst a man:he hath therby

forthwith forfeyd his goodes to the kyng.
¶ Also yf the sone be atteynyd in the lyfe
of the father / and after he purchaseth his
chattoure of Pardon of the kyng / and af-
ter the father dyeth / In this case the lande
shall eschete to the lord of the fee in so mo-
che that though he haue a yonger brother /
yet the lande shall not dyscende to hym / for
by the atteynydre of the elder brother the blod
is corrupte and the father in the lawe dyeith
Without heire.

¶ Also yf an abbot or a priour alayene the
landes of his house and dyeth / in ihat case
though his successor haue right to the lade
yet he may not entre: but he must take his ac-
cyon that is appoynted hym by the lawe.

¶ Also there is a mayyme in the lawe that
yf a vylayne purchase landes and the son
de entre / he shall enioye the lande as his owd
ne / but yf the vylayne alayene byfore the
lorde entre / that alayenacyon is good / And
the same lawe is of goodes.

¶ Also yfa man stelc goodes to the value
of .vii. d. or aboue it is felonye / and he shall
dye for it / And yf it be Under the value of .
.vii. d. then it is but petyt larcynye & he shall
not dye for it / but shalbe other wyse punyshe

The eight

shed after the dyscrecyon of the Inges ex-
cept it be taken fro the person / for yf a man
take any thyng he lytell soeuer it be /
from a manes persone felonously / it is cal-
led robbery and he shalldye for it.

Also he that is areynyd upon an Indys-
tement of felynye shalbe admittyd in fas-
uour of lyfe to chalenge .xxxv. Jurours
peremtoryly / but yf he chalenge any aboue
that nombre / the laude taketh hym as won
that hath refused the laude bycause he hath
refused thre hole enquestes / and therfore he
shall dye: but with cause he may chalenge as
many as he hath cause of chalenge to. And
further it is to be vnderstaunde that suche per-
emtorye chalenge shal not be admittyd in ap-
peale bycause it is at the foyte of the partie.

Also the lande of euery man is in the laud
enclosed from other though it lye i the open
felde. And therfore yf a man do a trespass
therin the wryt shalbe quare clausum fregit.

Also that tentes / comons of pasture of
turbarie reuercyons remayndres / nor suche
other thyngs whiche lye not in manuell oc-
cupacyon maye not be gruen nor graunted
to none other without wrytyng.

Also that he that recouertyth deute or das-

chappytre.

Folio. xxviii.

images in the kynges counte by suche an accypon wherin a Lapias laye in the processe may within a yere after the recouerye haue a Lapias ad satissaciendum to take the boordre of the defendaunt and to comynct hym to prisyon till he haue payde the dette and daimes / but ys there laye no Lapias in the fyre accypon then the playntyfe shall haue no Lapias ad satissaciendum but must take a fierifacias or an escgit within the yere: or a scire facias after the yere or within the yere ys he dyll.

Also ys a release or confirmyacion be made to hym: that at the tymc of the release made had no thynge in the lande. &c. the release or confirmyacion is vydde except certayne cases as to a bouchye & certayne other whiche nede not here to be remembred.

Also there is a maypyme in the lawe of Englannde that the kyng may dyssease no man / ne that no man may dyssease the kyng / ne pull any reuerayon or remayndre out of hym.

Also the kynges excellencye is so highe in the lawe that no freholde may be gyuen to the kyng ne be deryuyed from hym / but by mater of recorde.

The eyght

Also there was somtyme a maypme & a
laude in englande that no man shulde haue
a wryt of ryght:but by speyall suypte to the
kyng. And for a fyne to be made in the
Chancery for it/but tho mayppmes be chaunced
by the statute of magna carta the xviij.
chappc. Where it is said thus. Nulli negabim
in nulli videntur rectum vel iusticiam. And
by the sayd wordes nullinegabim/a man
shall haue a wryte of ryght of course in the
Chancery without suyng to the kyng
for it. And by the wordes nulli videntur
he shall haue it without fyne. And so mas
in tymes the olde mayppmes of the laude be
chaunged by statutes.

Also though he it be resonable that for the
manyfolde dyuersyties of accyons that be
in the laudes of Englannde/that there shuld
be dyuersyties of processe as in the reale ac-
cyons after one maner/and in personall ac-
cyons after another maner:yet it can not be
prouyd metely by reason that the same pro-
cesse ought to be had and none other/for by
statute it might be alteryd. And so the grou-
de of the sayd processes is to be referryd ons-
ly to the mayppmes and customes of the res-
almes. And I haue shewyd the these may-

chapytre.

Folio. pp v.

ynges byforr rchercyd / not to th^e intent to
shedde the speccally what is the cause of the
laude in them / for that woldde asse a great
respyte / but I haue shewyd them onlyc to
the intent that thou mayst perceyue that the
sayde mapymes and other lyke may conue
nyently be sette for one of the groundes of
the laudes of Englan^de / moreouer there be
dyuers cases / wherof I am in doute whet
ther they be onlyc mapymes of the laude or
that they be groundyd upon the laude of
reason / wherin I pray the let me here thy^s
ne opynyon. (Doctoure) I pray the shewde
those cases that thou meanest: & I shall ma
ke the answeare therin as I shall se cause.

CHereafter folowdeth dyuers cases wherin
the Student doutyth whether they be
onlye mapymes of the laude / or that
they be groundyd upon the laude
of reason. The. xv. chapytre.



Student) the lawe of engla
nde is that yf a man comauin
de another to do a trespass
& he dothit / that the comauin
deour is a trespasser. And I
am in doute whether that be only by a map
Dyaloge.

g.i.

The mynthe
yme of the lawde/or that it be by the lawde of
reason.

¶ Also I am in doute vpon what lawde it
is groundyd that the Accessory shal not be
put to answere before the prynceyppall &c.

¶ Also the lawde is that ys an Abbot by a
thyng that comyth to the vse of the howse
and dyeth that his successours shall be char-
gyd/ and I am somewhat in doute vpon
what grounde that lawde dependyth.

¶ Also that he that hath possessyon of lade
though it be by disseasō hath ryght agaynst
all men/but agaynst hym that hath ryght.

¶ Also that ys an accyon reall be syd as
gaynst any man that hath nothyng in the
thyng deinaundyd the dryt shal abate/as
at the comon lawde.

¶ Also that the alpenacyon of the tenuant
hangryng the dryt nor his entre in to rely-
gyn/or ys he made a knyghte/or ys she
be a weman and take an husbōde hangyn-
ge the dryt/that the dryt shall not abate.

¶ Also ys lande and rente that is goynge
out of the same lande come in to one mans
nes hande of lyke cstate and lyke suertye of
tytle/the rent is evyncte.

¶ Also ys lande dyscende to hym that hath

chapytre.

folio. pp vi.

tyght to the same lande byfore / he shall be
temytted to his better tytse ys he wyll.

Also ys two tytles be concurrent togys
ther / the eldest tytse shall be prefertyd.

Also that euery man is bounde to make
recompence for suche hurte as his beest shal
do in the corne or grasse of his neyghboure
though he knowd not that they were there.

Also ys the demaundaunt or playntyffe
hangynge his wrytte wyll ente in to the
thyng demaundyd his wryt shall abate.

And it is many tymes very harde and of
great dyffycultie to knowe what cases of
the lawe of Englannde be groundyd vpon
the lawe of reason / and what vpon custome
of the realme / and though it be harde to
discusse it: yet it is very necessary to be kno-
wen for the knowldeg of the parfyte reason
of the lawe / and ys any man thynke that
these cases byfore reheryd be groundyd vpon
the lawe of reason / then he may referte them
to the fyfte grounde of the lawe of Englā-
de whiche is the lawe of reason / wherof is
made mencyon in the. v.chapytre. And ys
any man thynke that they be groundyd vpon
the lawe of custome / then he maye referte
them to the maxymes of the lawe / whiche

Dyaloge.

g.ii.

The myneth

be assygned for the thirde grounde of the
lawe of Englaude wherof men; on is ma-
de in the. viii.chapytre as before apperyth.

(Doctoure) but I praye the sh: de me by
What auctorite is it prouyd in the lawes
of Englaunde that the casee that thou haste
put before in the. viii.chapytre / and suche
other whiche thou callest maymies oughte
not to be denied / but ought to be taken as
maymies / for sythe they can not be prouyd
by reason as thou agreeſt thy ſelfe they can
not / they maye as lyghtly be denied as af-
fermyd onles there be ſome ſuffycyent au-
ctorite to approue them. (Student) ma-
ny of the cuſtomes & maymies of the law-
es of Englaunde be knowden by the vſe and
cuſtome of the realme ſo apparantly that it
nedeth not to haue any lawe wrytten theris
of / for what nedyth it to haue any lawe
wrytten that the eldeſt ſone ſhall enheryte
his father / or that all the doughters ſhall en-
heryte togylher as one heire / rf there be no
ſone / or that the hufbonde ſhall haue the
goodes and chateyllys of his wyfe that ſhe
hath at the tyme of the ſpouseklys or after /
or that a baſtarde ſhall not enheryte as he-
re / or that epcutours ſhall haue the diſpoſi-

chapytre. folio. xxvii.

eyon of all the goodes of they: testatoute: and yf there be no executours that the ordynarye shall haue it / and that the heire shall not medle with the goodes of his auncestre: but any particuler custom helpe hym. The other maymynes and customes of the lawe that be not so openly knownen amonge the people may be knownen partly by the lawe of reason: & partly by the bokes of the lawes of Englande called yeres of termes / & partly by dyuers records remaynyng i the kynges courtes & in his tresorie. And speccially by a boke that is called the regestre / & also by dyuers statuts wherin many of the sayd customes and maymynes be ofte resyted / as to a dysygnet sercher wylle euydently appere.

COf the. v. grounde of the lawe of
Englande. The. v. chapytre.

Student) The. v. grounde of
the lawe of Englande stan-
dyng in dyuers particuler cu-
stomes vsed in dyuers coun-
ties townes / cyties / & lord/
shypes in this realme / the whiche particuler
customes bycause they be not agaynste the
Dyaloge.

g. iii.

The tenth

lawe of reason / nor the law of god / though
they be agaynst the sayde generall custome
or maynyng of the lawe: yet neuertheles they
stand in effecte and be taken for lawe / but
yf it ryse in questyon in the kynges courtes
whether there be any such particuler custome
or not / it shalbe tryed by .vi. men / & not by
the Jugs / except the same particuler custome
be of recorde in the same courte. Of whiche
particuler customes / I haue hereafter no/
ted some for an ensample.

Clystis there is a custome in Kent that is
called gaulekynde / that all the bretherne
shall enheryt togyther as sisters at the com
mon lawe.

CAlso there is another particuler custome
that is called burghenglyssh he wher the yon
ger sonne shall enheryte byfore the eldest: and
that custome is in notynghame.

CAlso there is a custom in the cytie of Lon
don that fre men thare: maye by theyr testa
mente intouslyd byqueth theyr landes that
they be seasyd of to whome they wylle / ex
cepte to mortmayne. And yf they be cyty
zens and fre men / then they maye also by
queth landes to mortmayne.

CAlso in gaulekynde though the father be

chapitre. folio. xxviii.

hangyd the sonne shall encript / for theyr cu/
stome is the fathet to the bough / the sonne to
the plough.

¶ Also in some countres the wyfe shal haue
the halfe of the husbondes landes in the na/
me of her do wyre as lōge as she lyueth sole.
¶ Also in some countre the husbonde shill
haue the halfe of the enheritaunce of his wy/
fe / though he haue no yssue by her.

¶ Also in some countre an infante wher
he is of the age of .x v. yere may make a fe/
fement / & the feffement good. And in some
countre wher he can mete an clie of clothe.

¶ Of the sypte grounde of the lawe of
Englaud. The. vi. chapytre.



Tudēt, The. vi. groun/
de of the lawe of Eng/
laude standeth in dyuers
statutes made by our so/
veraygne lord the kyng
& his progenytors /
and by the lordes spyry/
tuell and temporall / and the comons in dy/
uers parlyaments in suche cases wherc the
lawe of reason / the lawe of god / customes /

The clerynth
maynnes / ne other groundes of the lawe
semyd not to be suffycet to punyssh the euylle
men / and to rewarde good men. And I re-
membre not that I haue seen any other grou-
des of the lawe of Englynde / but only these
that I haue byfore remembred. furthermo-
re it appertyth of that I haue sayde byfore
that of tymes two or thre groundes of the
lawe of Englande muste be ioyned to gys-
ther / or that the playntyfe can open and des-
clare his ryght / as it may appere by this ex-
ample. If a man entre in to another manes
lande by force: and after maketh a fesshemet
for mayntenaunce to defraude the playntyfe
from his accyon. In this case it appertyth
that the sayd unlawfull entre is prohybyte
by the lawe of reason / but that the playn-
tyfe shall recouer treble damages that is by
reason of the statute made in the. viii. yere
of kyng Henry the. vi. the. ix. chapitre. And
that the damages shalbe seasyd by. vii. men
that is by the custome of the realme. And so
in this case thre groundes of the lawe of Eng-
lande mayntene the playnityffes accyon.
And so it is in dyuers other cases that nedē
not to be remembred no wile. and thus I make
apende for this tyme / to speke any fether

chapytre. folio. xxix.

of the groundes of the lawe of Englande.

(Doctor) I thake the for the great paye
ne that thou haste taken therin / neuertheles
for as moche as it appertyneth by y^t thou haste
sayd byfore that the lernyd men of the lawe
of Englande pretende / to vetyfye that the
lawe of Englande wyl no thyng do / ne
attempte agaynst the lawe of reason / nor
the lawe of god / I pray the answeire me to
some questyons grouedyd vpon the lawe
of Englande / howe as the thynketh the
lawe may stande with reason or coscience
in them. (Student) put the case & I shal
make answeire therin as well as I can.

(The fyfte questyon of the Doctor
of the lawe of Englande and cons
cience. The. vii.chapytre.



Doctor) I have hard say
that yf a man that is bound
be in an oblygacyon paye
the money : but he taketh
no acquittance or yf he ta
ke one & it happenyth hym
to lese it / that in that case he shal be compel
lyd by the lawdes of Englande to paye the
Dyaloge. h.i.

The twecluyth

money agayne / and howde maye it be sayde
then / that that lawde standeth with reason
or consyience / for as it is groundyd vpon
the lawd of reason that dettes ought of right
to be payde / so it is groundyd vpon the lawd
of reason (as me scmyth) that when they be
payde that he that payeth them shuld be dys
chargeyd. ¶ **S**tudent) Syrste thou must un
derstande that it is not the lawde of Engla/
nde / that yf a man that is bounde in an obly
gacyon pay the money without acquytanc
ce / or yf he take acquytance and lese it: that
therfore the lawd determineth that he oughte
of ryght to paye the money eftre sones / for
that lawde were bothe agaynstre reason & co
sevence / but trougth it is that there is a ge
nerall maxyme in the lawde of Englandande /
that in an accyon of dette sued vpon an ob
lygacyon / the defendaunte shall not plede
that he oweþ not the money / ne can in no
wyse dyscharge hym selfe in that accyon /
but he haue acquytance or some other wy
tyngc suffycyent in the lawde or some other
thyngc lyke / wytnessyng that he hathe pay
de the money / and that is ordyned by the
lawd to auoyde a great inconuenyence that
cō myght happen to come to many people

that is to say that euery man by a nude paſſe
toll and by a bare auerment shulde auoyde
an oblygacyon / whetfore to auoyde that in
conuenyence the laude hath ordayneſd that
as the defendant is charged by a ſufficient
wrytyng / that ſo he muſt be diſcharged by
ſufficient wrytyng / or by ſome other thyng
ge of as hygh auctorite as the oblygacyon
is. And though it may folowde therupō that
in ſome partyculer caſe a man by occaſyon
of that generall maypme maye be compel-
lyd to pay the money agayne that he payde
byfore / yet neuertheleſſe no defaute can be
therfore aſſygned in the laude . For lyke as
makers of laudes take hede to ſuche thyngs
as may oft fall / and do moſte hurte amon-
ge the people rather then to partyculer caſes
So in lyke wyſe the generall groundes of
the laude of Englande / hede more what is
good for many / then what is good for one
ſynguler perſon only. And bycause it ſhuld
be a hurte to many yf an oblygacyon ſhuld
be ſo lyghtly auoyded by worde. Therfore
the laude ſpecyally priuenyth y^e hurte un-
der ſuche maner as byfore appertyth. And
yet intendyth not / nor comauidyth not that
the money of ryght ought to be payde agayn

Dysaoge.

h.ii.

The viii.

He / but sellyth a generall rule / Whiche is
good and necessary to all the people / & that
euery man maye well kepe / Without it be
th:ough his owne defaute / and yf suche de-
faute happen in any persone / Wherby he is
Without remedye at the comon lawe: yet he
maye be holpen by a sub pena / & so he maye
in many other cases wher conscience ser-
uyth for hym / that were to longe to reherce
now. [Docto^r] but I pray the shew me
Under what maner a man may be holpen by
conscience. And whether he shal be holpen
in the same courte or i an other. [Student]
bycause it can not be wel declarid wher a
man shal be holpen by conscience and whe-
re not, but it be fyoste knowen what consci-
ence is / therfore bycause it perteyneth to the
moste propresye / to treate of the nature and
qualytie of conscience / therfore I praye the
that thou wylste make me some bryef decla-
racyon of the nature and qualytic of consci-
ence. And then I shall answere to thy ques-
tyon as well as I can. [Docto^r] I wylle
with good wyl do as thou sayste / & to the
intent that thou mayst the better understand
de that I shall saye of conscience / I shall
fyoste shew me the what sinderesis is / & then

chapytre. folio. xxvi.

What reason is, and then what conscience
is. And howe these thre dyffer amōg ethem
selfe I shall somwhat touche.

¶ What sinderesis is. The. viii. Chapytre.

Doctoure) Sinderesis is a naturall
powder of the souse sette in the hygh,
est parte therof / mouynge and ster-
ryng it to good / a abhorrynge cuylle. And
therfore sinderesis never synneth nor erryth.
And this sinderesis our Lorde put in man
to the intent that the ordre of thynges shuld
be obseruyd. For after saynt Deonyse the
Wysdom of god Ioyneth the begynnyng
of the seconde thynges to the laste of the fy-
ste thynges / for Aungell is of a nature to
understande without serchyng of reason:
and to that nature man is Ioyned by sinde-
resis / the whiche sinderesis maye not holyle
be extyncted neyther in man ne yet in dam-
ned soules. But neuertheles as to the use
and exercysse therof / it maye be lette for a ty-
me cyther throughe the darkenesse of ygnor-
raunce / or for Undyscrete delectacyon / or
for the hardnes of obstynacye / fyriste by the
darkenes of ygnoraunce sinderesis may be
Dyaloge. h. iii.

The. viii.

sette that it shall not murmure agaynst e/
uyll, bycause he byleuyth euyll to be good/
as it is in hetytykes / the whiche when they
dye for the wackyndnes of theyr errore by/
leue that they dye for the verrye trouthe of the
faythe. And by vndyscrete delectacyon /
sunderesis is somtyme so ouer layde that re/
morse or grudge of conscyence / for the tyme
can haue no place. For the hardnes of obsty/
nacye sunderesis is also set / that it maye not
styrrre to goodnes as it is in dampned sou/
les that be so obstynate in euyll / that they
may never be enclyned to good. And thou/
ghe sunderesis may be sayd to that poynt ex/
tyncte in dampned soules: yet it may not be
sayd that it is fully extyncte to all intentes
For they alwaye murmure agaynst the e/
uyll of the Payne that they suffre for synne.
And so it may not be sayde that it is vny/
uersally / and to all intentes / and to all
tymes extyncte. And this sunderesis is the
begynnyng of all thynges that may be le/
nyd by speculacyon or studyc. And mynys/
stretch the generall groundes & prynciples
therof. And also of all thynges that are to
be done by man / an example of suche thyng/
ges as may be lenyd by speculacyon apper-

chapytre. Folio. xxvii.

ryth thus: sinderesis saythe that euery hole
thyngē is more then any one parte of the sa-
me thyngē / and that is a sure grounde that
neuer faylēth. And an example of thynges
that are to be done / or not to be done: is whe-
re sinderesis sayth: no euyl is to be done: but
that goodnes is to be done and folowed / &
euyll to be fledde and suchē other. And ther-
fore sinderesis is called by some mē the lādō
of reason / for it mynystreth the pryncypleſ
of the lādō of reason / the whiche be in eue-
ry man by nature in that he is a reasonable
creature.

¶ Of reason. The. viii. chapytre.

Doctour) Whan the fyfste mā
Adam was create / he recey-
ued of god a doublē iye / that
is to saye an outwarde iye /
wherby he myght se vysyble
thynges / and knowe his bodily enemyes
and esche we theym. And an inwarde iye /
that is the iye of reason / wherby he myghte
se his spyrituell enemyes that syḡhteth a/
gynst his soule and beware of them. And
amonge all gyftes that god gaue to man /

The. viii.

this gyfte of reason is the moste noblest / for
therby man piesseth all beestz / and is ma-
de lyke to the dygnytic of aungellys / dyscer-
nyng e trouthe from fasshede / & euyll from
good. Wherfore he goeth farre from that ef-
fecte that he was made to When he taketh
not hede to the trouth: or When he preferrith
euyll byfor good. And therfore after Doc-
tors reason is that power of the soule / that
dyscernyth betwene good and euyl / and by
twene good and better comparynge the one
to the other: the whiche also chevysyth ver-
tues / louyng god / and feleth vices. And rea-
son is called ryght wyse and good / for it is
conformable to the wylle of god and that is
the fyreste thyngē & the fyreste rewelle that all
thynges must be ruelyd by / and reason that
is not ryght wyse no: strayte: but yt is sayd
culpable is eyther bycause she is deceyued
With an errour that myght be ouercome / or
els through her pryde or slouthfulnes she en-
queryth not for knowleg of the trouth that
ought to be enquiryd. Also reason is deuys
dedin to two partyes / that is to saye in to
the hygher parte / and in to the lowder parte.
The hygher parte he dyth heuenly thynges
eternall. And reasonyth by heuenly lawes

es/or by heuerly reasons what is to be don
and what is not to be don. And what thyng
ges god comandeth / and what he prophes
yeth. And this higheste pte of reason hathe
no regarde to transitorie thynges / or tem
porall thyng : but what somtyme as it were
by maner of councyll she bryngeth forthe
heuerlyc reasons / to ordre wel temporall
thynges. The lower parte of reason doth
kyth moste to gouerne wel temporall thyng
es. And she groundeth her reasons moche
Upon lawes of man / and Upon reason of
man wherby she concludyth that that is to
be done that is honest and expedyent to the
common welth / or not to be done for it is not
expedyent to the common welth. And so that
reason wherby I knowe god & suchethyn
ges as perteyn to god / bysongeth to the
hygh ste parte of reason. And that reason
wherby I knowe creatures bysongyth to
the lower parte of reason. And though these
two partes / that is to say the hygher parte
& the lower parte be won in dede & essence /
yet they dyffer by reason of theyr working
and of thyr offyce as it is of one selfe iye:
that somtyme losyth Upwarde / and som
tyme downewarde.

The. xv.

¶ Of consycence. The. xv. chapytle.



Octoure) This woorde coscience / whiche in laten is
cassed conscientia is com-
posed of this prepositi-
on: cum / that is to say in
englyssh he: with / and with
this nowyne scientia / that is to saye in en-
glyssh knowledge / and so consycence is as
moche to say as a knowledge of one thyng
With another thyng / and consycence so tas-
ken is no thyng els / but an applyenge of
any scyence or knowledge to some particu-
ler acte of man. And so coscience may som-
tyme erre / and somtyme not erre. And of cos-
cience thus taken Doctoures make many
dyscrypcyons / wherof one doctoure saythe
that consycence is the lawe of oure Under-
standingyng. Another that consycence is an
habyte of the mynde dyscernyng byt wyppe
good and evyll. Another that consycence is
the Juggement of reason Juggynge on the
particuler actes of man / all whiche sayens-
ges agre in one effecte / that is to saye that
consycence is an actuell applyenge of any
cunnyngge or knowledge to such thynges as

chappyte. folio. xxxiii.

be donne / wherupon it foloweth that vpon
the moste parfyte knodlege of any law or
cunnyng. And of the moste parfyte and
most true applyeng of the same / to any pty-
culer acte of man: foloweth the most pfyte
the most pure and the moste beste coscience
And yf there be defaute i knodwyng of the
trouth of such a lawe / or in the applyenge
of the same to any particuler acte then ther
upon foloweth an errour / or defaute in co-
science / as it may appere by this example /
Hideresis mynistryth a vnyuersall pyn-
ciple that neuer erryth / that is to say that an
unlawfull thyng is not to be done. And
then it might be taken by some mā that eue-
rye oþre is unlawfull bycause oure Lorde
sayth Mat. v. ye shall in no wyse swerte.
And yet he that by reason of the sayd Wor-
des wyl hold that it is not lawful in no ca-
se to swerte / erryth in couscience / for he hath
not the parfyte knodlege and understand-
yng of the trouth of the sayd gospell / nor
he reduceth not that sayenge of scripture /
to other scriptures / in whiche it is graunted
that in some case an oþre may be lawfull /
& the cause why couscience maye so erre in
the sayd case / in other lyke / is bycause con-

Dyaloge.

f.ii.

The. v.

Scyence is formed of a certayne partyculer
proposicion or questyon groundyd upon
vnyuerſall ruleſ or daynes for ſuch thyn-
ges as are to be done. And bycauſe a partys
culer proposicion is not knownen of hym
ſelue, but muſte appere and be ſeichyd by a
dyligent ſerche of reaſon, therfore in that
ſerche and in the conſcience that ſhuld be for-
med therupon may happen to be errore, &
therupon it is ſayde that there is errore in
conſcience, whiche cirour cometh eþter by
cauſe he doþe not aſſent to that he ought to
aſſent unto, or els bycauſe his reaſon wher
by he doþe referte one thynge to another is
dyscreued, for further declaracion wherof
it is to understande that errore in conſcien-
ce cometh. viii. maner of wayes. fyſic is
throughe yghoraunce, and that is when a
man knoweth not what he ought to do, &
what he ought not to do. And then he ought
to aſke counceyſſ of them that he iþyketh
moſte experte in that ſcience wherupon his
doute ryſeth. And yf he can haue no coun-
ceyſſ, then he muſte holſy comitt hym to god
Al. d he of his goodnes wyll ſo ordre hym
that he wyll ſave hym from offence. The ſe-
conde is through necligēce, as when a ma-

chapitre. folio. xxviii.

is necligent to setche his owne conſcience /
or to enquere the trouth of other. The thyrde
is throught p̄yde as when he wyl not me-
ſyn hym ſelue ne byſeuē them that be better
a wyſer then he is. The fourth is throught
ſingularite as when a man foloweth his
owne wyſt / & wyl not conſerne hym ſelue
to other / nor folowethe the good comon way-
es of good men. The fyfte is throught an in-
ordynat affeccyon to hym ſelue / wherby he
makeþ conſcience to folowethe his deſire / & ſo
he cauſyſt her to go out of her ryght course.
The ſixte is throught puſillany myte wher-
by ſome perſone diedyth ofte tymes ſuche
thynges as of reaſon he ought not to diede.
The ſevynth is throught perplexitie / & that
is when a man byſeueth hym ſelue to be ſo
ſet byt wyſt two ſynes that he thynketh it
unpoſſyble / but y' he ſhal fall i to the one /
but a man can never be ſo propreyd indeſte
but throught an erroure in conſcience: and yf
he wyl put a way that erroure he ſhall be de-
ſyuered. Therfore I praye the that thou
wyſte alwayes haue a good conſcience and
yf thou haue ſo / thou ſhalt alwayes be me-
ty / and yf thyne owne herte reproue the not
thou ſhalte alwayes haue in warde peace.

Dyaloge.

l.iii.

scrutine is formed of a certayne particuler
proposicion or questyon groundyd vpon
vnyuersall rules ordyned for such thyn-
ges as are to be done. And bycause a partys
culer proposicion is not knownen of hym
selfe, but muste appere and be seichyd by a
dyligent serche of reason, therfore in that
serche and in the cōscience that shuld be for-
med therupon may happen to be erroure, &
therupon it is sayde that there is erroure in
conscience, whiche erroure cometh either by
cause he dothe not assent to that he ought to
assent vnto, or else bycause his reason wher
by he dothe referre one thyng to another is
dyscreued, for further declaracion wherof
it is to understande that erroure in conscienc-
e cometh. viii. maner of Wayes. Fyue is
through ignorance, and that is when a
man knoweth not what he ought to do, &
what he ought not to do. And then he ought
to aske counseil of them that he synketh
moste experte in that scrutine wherupon his
doute ryseth. And if he can haue no coun-
seyl, then he muste holylly comitt hym to god
Almighty of his goodness wyll so ordene hym
that he wyll saue hym from offence. The se-
conde is through neccyngēce, as when a man

chapytre. folio. xxviii.

is neccygent to serche hie oþne conscyence/
oþ to enquerre the trouþ of other. The fyfde
is throuȝh prÿde as when he wyl not mes-
kyn hym selfe ne byseue them that be better
a wyser then he is. The fourth is throuȝhe
syngulare yme as when a man foloweth his
owne wyt / & wyl not conserue hym selfe
to other / nor folowethe the good comon way-
es of good men. The fyfe is throuȝh an in-
ordynat affreccccyon to hym selfe / wherby he
maketh cōscyencie to folowethe his desyre / & so
he causyþ her to go out of her ryght course.
The syxte is throuȝh p̄silanymyte wher-
by some persone dredyth ofte tymes such
thynges as of reason he ought not to dredē.
The sevynth is throuȝh perplextie / & that
is when a man byscueth hym selfe to be so
set byt wþt two synnes that he thynketh it
unpossyble / but y' he shal fall i to the one /
but a man can never be so prop̄exyd indeede
but throuȝh an errour in conscyence: and yf
he wyl put a way that errour he shal be de-
lyueryd. Therfore I praye the that thou
wylte al wayes haue a good cōscyencie and
yf thou haue so / thou shalst al wayes be me-
ty / and yf thyne owne herre reþoue the not
thou shalte al wayes haue in warde peace.

Dyaloge. l.iii.

The. v. v.

The gladnes of ryght woyse men is of god
and in god / and theyr Joye is alwayes in
trouth and goodnes. There be many dyuer
syties of conscyence / but there is none better
then that / wherby a man trewely knoweth
hym selfe / many men knowde many great &
hygh cunyng thyngs ; & yet knowd not them
selfe / and trewely he that knoweth not hym
selfe knoweth no thyng well. Also he hath
a good and a clene conscyence / that hath pu
rtie and clennes in his herte / trouth in his
worde / & right wysenes in his dede. And as
a lyght is sette in a lanterne that all that is
in the house may be seen therby / so almyghty
god hathe sette conscyence in the myddes
of euery resonable soule as a lyght wherby
he may dyscern and know what he ought
to do : and what he ought not to do. Therfo
re as moche as it behouyth the to be occu
pyed in such thyngs as parteyne to the law.
It is necessarye that thou euer holde a pure
and a clene conscyence speciallye in suche
thyngs as concerne restitucion for the syne
is not forgyuen : but the thynges yt is wrong
fullye taken be restord. And I cunceyfl
the also that thou loue that is good / & flye
that is evyl / and that thou do to another as

chapytre. Folio. vvvvi.
thou woldest shuld be done to the / and that
thou do no thyng to other that thou wol-
dest not shuld be done to the . That thou do
no thyng agaynst trouthe / that thou lyue
peaceablye with thy neyghboure / and that
thou do Justyce to euery man as moche as
in the is. And also that in euery generall tu-
le of the lawde / thou do obserue & kepe equy-
tie / and yf thou do thus I trust the lyght of
thy lanterne / that is thy coscyēce shal never
be extyncted . **S**tudent) but I praye the
she we me what is that equytie yf thou hast
spoke of byfore: and that thou woldest that
I shulde kepe . **D**octour) I wyll with
good wyll shew the somwhat therof.

What is equytie. The. v. chapytre.

Doctour) Equytye is a ryght wyse:
nes that consideryth all the ptyculer
cyrclustances of the dede / the whiche
also is tēpetyd with the swetnes of mercye.
And suche an equytye must alway be ob-
seruyd in euery lawde of man / and in euery
generall rewle therof / & that knewe he wel
that sayd thus. Lawdes couet to be rewlyd
by equytye. And the wyse mansayth: be not

The. vi.

our moch ryght wryfe fo: the extreme ryghe
wysenes is extreme wronge, as who sayth
yf thou take all that the wordes of the law
gryeth the thou shalte somtyme do agaynst
the lawe. And for the playner declaracion
what equytic is thou shal understande that
syth the dedes and actes of men, for whiche
lawes ben ordyned happen by ducas maz
kers in synylke. It is not possyble to make
any generall rewle of the lawe, but that it
shall fayle in some case. And therfore maz
kers of lawes take heed to suche thynges as
may often come and not to euery particular
case, for they couldc not though they woldc
And therfore to folowe the wordes of the
lawe, were in some case both agaynst Ius
stree & the comon wylth: Wherefore in some
cases it is necessary to leue the wordes of the
lawe, & to folowe that reason and Justice
requyret, & to that intent equytic is ordays
ned; th it is to say to tempre and myttigate
the rygoure of the lawe. And it is called als
so by some men epicaia. The whiche is no
other thyng but an excepcion of the lawe
of god, or of the lawe of reason, from the
generall rewles of the lawe of man: When
they by reason of their generaltyre woldc

chapytre. Folio. ppviii.

in any particuler case Juge agaynste the
la^we of god / or the la^we of reason / the whiche
che expecyon is secretly vnderstāde in euery
generall rēwle of euery posytyue la^we.
And so it appertyth that equytie takyth not
away the very ryght / but only that that seemeth
to be ryght by the generall wordes of
the la^we / nor it is not ordayne^d agaynst
the cruelnes of the la^we for the la^we in such
case generallye taken is good in hym selfe /
but equytie folowyth the la^we in al party-
culer cases wher ryght and Justyce requy-
rēteth / nor wylth standynge that a general rēwle
of the la^we be to the contrary / wherfore it
appertyth that yf any la^we were made by
man without any suche excep^cyon expres-
syō: or implied it were manifestly vnreaso-
nable / & were not to be sufferyd / for suche
cases myght come that he that wolde obser-
ue that la^we shuld breke both the la^we of
god / and the la^we of reason. As yf a man
make auo^we that he wyl^t never eate whys-
te meate / & after it happenyth hym to come
there wher he can gette none other meate.
In this case it behouyth hym to breke his auo^we
for that particuler case is exceptyd se-
cretly from his general auo^we by this equip-

Dyalege.

f.i.

The. vi.

tie or epykay as it is sayd byfore. Also yfa
laws were made in a cytie that no man un-
der the payn of deth shuld open the gates of
the cytie byfore the sonne ryfynge / yet yf the
Cytizens byfore that houre fleyng from
theyr enemyes come to the gates of the cytie
& one for sauynge of the cytizens openyng
the gates byfore the houre appoynted by the
lawe: yet he offendyng not the law / for that
case is exceptyd from the sayd general law
by equityie as is sayd byfore / and so it appes
tyth that equityie rather foloweth the intent
of the lawe / then the wordes of the lawe.
And I suppose that there be in lyke wyse
some lyke equityies groundyd upon the ges-
nerall rewlcs of the lawe of the realme.

CStudent) ye betysy wherof one is this.
There is a generall prohibycyon i the law
es of Englande: that it shal not be lawfull
to no man to entre in to the freholde of ano
ther without auctorytie of the owner or of
the law / but yet it is exceptyd from the say
de prohibycyon by the lawe of reason: that
yfa man drue beestes by the hyghe way &
the beestes happen to escape in to the corne
of his neyghbour. And he to brynge out his
beestes that they shuld do no hurte gothe in

chapytre. folio. vvviii.

to the grounde and fetteth out the beest: the
re he shall Justyfie that entre in to the groun-
de by the lawe. Also notwithstanding the
statute of Edward the thirde made the.
xxviii. yere of his reygn / wherby it is ordain-
ed that no man upon Payne of imprysone-
ment shuld gyue any almesse to any Valys-
ant begger / that is well able to laboure: yet
ys a man mete with such a Valyant beg-
ger in so colde a wether and so lyght appa-
rell / that ys he haue no clothes he shal not
be able to com to no towne to haue succour:
but is lykely rather to dye by the waye / & he
therfore gyueth hym apparell to sau his ly-
fe he shal be excused of the sayde statute by
suche an excepcion of the lawe of reason as
I haue spoken of. (Doctoure) I knowe
well that as thou sayst he shal be exceptyd
of the sayd statute by consciencie / and ouer
that yt he shal haue great rewarde of god/
for his good dede / but I wolde wytte whe-
ther the partie shal be also dischargyd in the
common lawe by suche an excepcion of the
lawe of reason or not / for though ygnorancie
inuyncible of a statute excuse the partie
agaynst god / yet as I haue herde it excus-
syth not in the lawes of the realme / ne yet

Dyaloge.

§.ii.

The. vi.

In the Chaucerian as some say all though the case be so that the partie to whom the forfeiture is givien may not with conscience leue it. ¶ (Student) Verlyp by thy questy, on thou haste put me in a great doute, wherfore I pray the gyue me a respyte therin to make the answere but as I suppose for the tyme how be it I wyl not fully affirme it to be as I saye, but it shuld semme that he shulde welle plede it for his dyscharge at the common lawe, bycause it shall be taken that it was the intent of the makers of the statute to excepte such cases. And the Juges may many tymes Juge after the mynde of the makers as farre as the lettred maye suffre and so it semyth they may in this case And dyuers other excepçions there be also from other generall groundes of the lawe of the realme by such equyties as thou hast remembred byfore that were to longe to reherce now. ¶ (Doctoure) but yet I pray the shewe me shortlye somewhat more of thy mynde Under what maner a man may be holpen in this Realme by such equytic. ¶ (Student) I wyl with good wyl shewe the somewhat therin.

chapytre. folio. xxxv.

CIn what maner a man shal be holpen
by equytyes in the lawdes of Eng-
lande. The. viii. chapytre.



Ludent) fyoste it is to
be vnderstande / ther be
imany cascs dyuers ex-
ccpcyons from the gene-
rall groudes of the law
of the Realme / by other
reasonable groudes of
the same lawde / wherby a man shall be hol-
pen in the comon lawde / as it is of this gene-
rall grounde that it is not lawfull for no
man to entre vpon a dyscent / yet the reso-
nablenes of the lawde exceptyth from that
grounde an infaunte that hathe ryght and
hath sufferryd suche a dyscent / and hym al-
so that makyth contynuell clayme / and suf-
feryth them to entre / not withstandyng the
dyscent. And of that exception they shal ha-
ue auantage in the comon lawde / and so it
is lyke wyse of dyuers statutes as of the sta-
tute wherby it is phybyt / that certayne par-
tyuler tennantes shall do no waste / yet yf a
lease for terme of yeres be made to a enfaunt
that is within yeres of dyscrecion: as of the
Dyaloge.

§.iii.

The. viii.

age of. v. or. vi. yeres / and a straunger do
waste in this case / this enfaunte shal not be
punysshed for the waste / for he is exceiptyd
and excused by the lawe of reason . And a
woman couerte to whom suche a lease is ma
de after the couerture shall be also dyschar
ged of wast after her husbandis deth by a rea
sonable mayyme & custome of the realme /
And also for reparacyōs to be made vpon
the same grounde: it is lawfull for suche par
tyuler tenautes to cutte down trees vpon
the same grounde to make reparacions . But
the cause ther as I suppose is for y^t the myn
de of the makers of the sayd estatute shalbe
taken to be that that case shuld be exceiptyd
And in all these cases the partyes shalbe
holpen in the same courte and by the comō
lawe . And thus it apperyth that somtyme
a man maye be exceiptyd fro the rygoure of
a mayyme of the law by another mayyme
of the lawe . And somtyme fro the rygoure
of a statute by the lawe of reason / and som
tyme by the intent of the makers of the sta
tute / but yet it is to understande that most
commonly where any thyngē is exceiptyd fro
the generall customes or mayymes of the
laws of the realme / by the lawe of reason

the partie must haue his remedye by a wryt
that is called sub pena. By a sub pena lyte in
the case: but where a sub pena lyeth / & wher-
e not it is not our intent to treate of at this
tyme. And in some case there is no remedye
for such an equytie by wraye of compulſy-
on / but all the remedye therin muste be co-
mytted to the conſcience of the partye.

¶ Doctoure) but in case where a sub pena
lyeth to whom shall it be dyrectyd: whether
to the Juge or to the partie. ¶ Student) It
shall neuer be dyrectyd to the Juge / but to
the partie pleyntife/or to his attorney and
therupon an iniuccyon comandynge them
by the same vnder a certayne payne ther-
in to be contayned that he procede no ferther
at the comon lawe / tyll it be determinyd in
the kynges Hauncerte / whether the pleynti-
fe hathe ryght in conſcience to recouer or
not. ¶ Answere) than the pleyntife by reason
of ſuche an ~~accusacion~~ ſeafyfth to aske any
ferther perſone: the Juges wyll in lyke wyſe
ſeaffe to make any ferther proceſſe in that
behalfe. ¶ Doctoure) is there any mencion
made in the lawes of Englanſe of any ſu-
che equyties. ¶ Student) of this terme / equy-
tie to that intent that it is ſpoken of here: the

re is no mēcyon made in the lawdes of Eng
lande:but of an cquytie dyryuyed vpon cer
taine statutes mēcyon is made many ty
mes and often in the lawde of Englannde:
But that equytie is all of another effecte
then this is:but of the effecte of this equytie
that we nowe speke of mēcyon is made
many tymes/ for it is ofte tymes argued in
the lawde of Englāde wher a sub pena ly
eth and wher not:and dayly bylles be ma
de by men leynyd in the lawde of the realme
to haue sub penas. And it is not prohbyte
by the lawde:but that they may well do it so
that they make them not/but in case wher
they ought to be made/and not for vexacy
on of the ptye/but accordyng to the trouth
of the mater. And the lawde wylle in many
cases that there shal be suche remedye in the
Chancerye vpon dyuers thynges groun
dyd wherон such equyties. And then the lord
de Chanceller must ordene his coscience af
ter the redoles and groundes of the lawde of
the realme / in so moche that it had not ben
moche incouenient to haue assygned suche
remedye in the Chancerye vpon suche equy
ties for the vii. grounde of the lawde of eng
lande/but for as moch as no recorde remay

chappitre.

folio. vii.

neth in the kynges courtes of no suche bylle
ne of the wrytie of sub pena or in iunccyon
that is sayd therupon / therfore it is not sette
as for a spccyal grounde of the lawe / but
as a thyng that is suffred by the lawe .

Doctoure) then sythe the partyes oughte
of ryght in many cases to be holpen in the
Chauncerye vpon suche equyties . It se
myth that yf it were ordayned by statute /
that ther shuld be no remedye vpon suche
equyties in the Chauncerye / nor in none o
ther place / but that euery mater shuld be or
detyd onely by the redres and groundes of
the comon lawe / that that statute were a
gaynst ryght and consciencie . **S**tudent)
I thynke the same / but I suppose there is
no suche statute . **D**octoure) there is a sta
tute of that effecte as I haue herde saye /
Wherin I wolde gladly here thy oppynys
on . **S**tudent) shewe me that statute / and
I shall with good wyll saye as me thyn
keth therin .

Whether the statute herafter referryd
by the Doctoure be agaynst consci
ence or not . The . p . viii . chappitre .

Dyaloge .

p . i .

The xviii.



Octoure) There is a statute made in the .iii. yere
of kyng Henry the .vii. the
xxvii. chappell / wherby it
is enacted that Jugemen-
tes gyuen i the kyng's cour-
tes / shall not be examyned in the L haunce-
rye / Parlyament / nor els where / by which
statute it apperyth that ys any Jugement be
gyuen i the kyng's court / agaynst an equy-
tie / or agaynst any mater of cōscyence / that
there can be had no remedye by that equytie
for the Jugement can not be reformyd / with-
out examynacion / and the examynacion
is by the sayd statute prohybyt / Wherfore it
semyneth that the sayd statute is agaynst con-
scyence / What is thyne oppynyon therin.

C Student) Yf Jugementes gyuen in the
kynges courtes shulde be examyned in the
L hauncerye / before the kyng's councelyll or
in any other place / the playntyfes or demau-
dauntes shuld seldom come to the effecte of
theyr suyte / ne the lawe shulde never haue
ende. And therfore to eschewe that inconve-
niency that statut was made. And though
peradventure by reason of that statute / some
synguler persone may happen to haue losse.

Netherthelesse the sayd statute is very neces-
satye to esche we many great deuacions &
vniust expences that wolde els com to ma-
ny playntyfes that haue ryght wyfely recou-
netyd in the kynges courtes. And it is mos-
t che more prouyded for / in the lawe of Eng-
lade that hurt no: damages shuld not com
to many then onylc to one. And also the
sayd statute doth not prohybyt equytie / but
it prohybyteth only the examynacion of the
Iugement / for the esche wyng of the incon-
uenyence byfore reheryd. And so it semyth
that the sayd statute standeth with good co-
scyence. And in many other cases wher a
man doth wronge / yet he shall not be compel-
lyed by waye of compulson to reforme
it / for many tymes it muste be lefte to the co-
scyence of the pte / whether he wyl redresse
it or not. And in suche case he is in conscienc-
e as well bounde to redresse it ys he wyl sa-
ue his soule / as he were ys he were compel-
lable thereto by the lawe as it maye apperte
in dyuers cases that maye be put vpon the
same grounde. [Doctour] I pray the put
some of those cases for an example. [Stu-
dent] Yf the defendaunte wage his lawe in
an accyon of dette broughte vpon a trewe
Dyaloge.

dette the pleyntyfe hath no meates to come
to his dette by way of compulſyon neyther
by ſub pena nor other wyſe / and yet the deſ-
fendant is bounde in conſcience to pay hym.
Also yf the graunde Jurye in atteynant affer
me a falſe verdyt gruene by the petry Jurye
there is no further remedie but the conſcience
of the partie. Also wherethe can be had no
ſuffycyent prouiffe, there can be no remedye
in the Lhauncerye / no more then there may
be i the ſpryngtucklourte. And bycause thou
haſte gruene an occaſyon to ſpeke of conſci-
ence / I Wolde gladly here thy oppynyon
wherē conſcience ſhall be rewlyd after the
laſte / and wherē the laſte ſhall be rewlyd
aſter conſcience. ¶ (Doctoure) And of thare
mater I Wolde lyke Wyſe gladly here thy
oppynyon ſpecyally in caſes groudyd vpon
the laſtes of Englante / for I haue not her-
de but lytell therof in tyme past / but byfore
thou put any caſes therof: I Wold that thou
Woldest ſhew me how those two queſtiōns
aſter thy oppynyon ar to be vnderſtande.

¶ Of what laſte this queſtiyon is to be
vnderſtande / that is to ſay wherē con-
ſcience ſhall be rewlyd aſter the
laſte. The. ix. chappytre.



Tudent) the lawe wherof
menyon is made in this que
styoun/ that is to saye where
conscience shall be rewlyd
by the lawe/ is not as me se
myth to be vnderstāde only of the lawe of
reason:and of the lawe of god. But also of
the lawe of man that is not contrary to the
lawe of reason nor the lawe of god:but that
it is superaddyd vnto them for the better or
deryng of the comon welth/ for such a law
of man is alwayes to be settē as a reule in
conscience so that it is not lawfull for no
man to go fro it on the one syde ne on the o
ther/ for such a lawe of man hath not only
the strength of manes law/ but also of the
lawe of reason/or of the lawe of god/ wher
of it is dyryuyed / for lawes made by man
whiche haue receyued of god power to ma
ke lawes be made by god. And therfore con
science muste be orderyd by that lawe/as it
muste be vpon the lawe of god/and vpon
the lawe of reason. And furthermore that
law wherof menyon is made in the latter
ende of the chapyt next byforc:that is to say
in that questyon wherin it is askyd where
the lawe is to be lefte and forsaken for cons
Dyaloge.

scyence / is not to be vnderstāde of the lawd
of reason nor of the lawd of god: for tho t wo
lawdes māre not be lefte / nor it is not to be
vnderstāde of the lawde of man that is ma
de in particuler cases / and that is consonant
to the lawde of reason / & to the lawde of god /
and that yet that lawde shuld be lefte for cō
scyence / for of suchē a lawde made by man
consciencē muste be rewlyd as is sayde by
fore: nor it is not to be vnderstāde of a lawd
made by man cōmaūsyng or prophybytyn
ge any thyng to be done that is agaynst the
lawde of reason / or the lawde of god. For yf
any lawde made by man / bynde any person
to any thyng that is agaynst the sayd lawd
es / it is no lawde / but a corruptyon & a ma
nyfēt error. Therfore after them that be
lētynyd in the lawdes of Englande / the sayd
questyon / that is to saye whēre the lawde is
to be lefte for consycience and whēre not / is
to be vnderstande in dyuers maners / and
after dyuers rewles as hereafter shall soms
whāt be touchyd.

Cffyrste many vnlētynyd persones byscute
that it is lawfull for them to do with good
consciencē / all thynges whiche yf they do
them / they shall not be punysshēd therfore

By the lawe: though the lawe doth not war
raunt them to do y^e they do, but only when
it is done dothe not for some resonable consi-
deracyon punysshe hym that doth it, but
scuyteth it only to his cōscyence. And therfore
many psones do oft tymes that they shuld
not do: & kepe as theyr oþne that, that in cō-
scyence they ought to restore, wherof there is
in the lawes of Englande this case.

If two men haue a wood ioynly / & the
one of them sellyth the wood and kepyth al
the money hollye to hym selfe. In this case
his felowē shall haue no remedye agaynst
hym by the lawe, for as they wþē they toke
the wood ioynly put eche other in trusse / &
were cōtentys to occup togidher: so the lawe
sufferysh them to order the pnyttes therē
of accordyng to the trusse that eche of them
put other in. And yet yf one toke all the pro-
fyttes, he is bounde in conscience to restore
the halfe to his felowē, for as the lawe gyu-
ueth hym ryght onlye to the halfe lande, so
it gyueth hym ryght onlye in conscience to
the half pnyttes. And yet neuertheles it can
not be sayd in that case / that the lawe is a
gaignst cōscyence, for the lawe neyther wyl
lyth ne comandith that one shuld take all

The. viii.

the profyttes / but leuyth it to theyr conseynce / so that no defaute can be founde in the lawe: but in hym that takyth all the profyttes to hym selfe maye be assygned defaute / Whiche he is bounde in cōscyence to reforme yf he wyl sauе his soule / though he can not be compellyd thereto by the lawe. And therfore in this case & other lyke / that oppynyon Whiche some haue that they may do with cōscyencie all that they shall not be punysshed for by the lawe yf they do it: is to be lefte for conscience / but the lawe is not to be lefte for conscience.

¶ Addyson.

Also many men thynke that yf a man haue lande that another hath tytle to / yf he yf hath the ryght shall not by the accyon that is gyuen hym by the lawe to recouere his ryght by: recouerte damagis; that then he that hath the lande is also dyschargyd of damages in consequence / And that is a great erroure in consequence / for though he can not be compellyd to yelde the damages by no mannes lawe / yet he is compellyd thereto by the lawe of reason & by the lawe of god / wher by we be bounde to do as we wolde be don to / and that we shal not couerte our neygh-

bours good. And therfore yf tenaunt in tayl
le be dysseasyd and the dyscasoute dyeth sea
syd / and then the heire in the tayle bryngeth
a founedon and recoueryth the lande / and
no damages / for the lawde gyueth hym no
damage in that case: yet the tenaunt by con
scyence is bounden to yelde damages to the
heire in tayle fro the deth of his auncestre.

¶ Also it is taken by some men / y^e the law
muste be leste for cōscyence whiche the lawde
doth not suffre a man to denye that he hath
byfora affirmyd i courte of recordē: or for y^e
he hath wylfullye excludyd hym selfe ther
of for some other cause / as yf the doughter
that is only heire to her father wyl sue ly
ueray with her suster that is bastarde i that
case / she shal not be after receyued to saye
that her suster is bastarde: In so moche that
yf her suster take halfe the lande with her/
there is no remedy agaynst her by the law.
And no more there is of dyuerse other esto
peleys / whiche were to lōge to reherce now
And yet the partie that may take auantage
of suche an estoppel by the lawde / is boun
de in cōscyēce to forsake that auantage spe
cally yf he were so estopped by ygnorān
ce: and not by his owne knōwlege & assent

The. viii.

for thoughc the lawe in such cases gyueris
no remedye to hym that is esioppyd, yet the
lawe Iugeþ not that the other hatþ ryght
Unto the thyngc that is in daryaunce by
swypþ theym

¶ Also it is understande that the lawe is
to be leste for conſcience wherē a thyngc is
tryed & founde by verdyt agaynst the trouth
for in the comon lawe the Iugement must
be gyuen accordyngc as it is pleadyd & tryed
lyke as it is i other lawes / that the Iuge
mente muste be gyuen accordyngc to that
that is pleadyd and prouyd.

¶ Also it is understande that the lawe is
to be leste for conſcience wherē the cause of
the lawe doth cease / for when the cause of
the lawe doth cease / the lawe also doth ceas
se in conſcience as appertyneth by this case he
re after folowinge.

¶ Addycyon.

¶ A man maketh a lease for terme of lyfes /
and after a straunger doth waste / wherfore
the leesse bryngeth an accyon of trespass &
hath Iugement to recouer damages hauyn
ge regarde to the treble damage / that he shal
yelde to hym in the reuercyon. And after he
in the reuercyon before accyon of wast sued

dyeth so that the accyon of waste is therby
cōfynctyd / then the tenaunt for terme of sy-
fe (thoughe he maye se we execucion of the
sayd Jugement by the lawe) yet he may not
do it by cōscyence / for in cōscyēce he may ta-
ke no more then he is hurted by the sayd tres-
passe / bycause he is not chargyd ouer with
the treble damages to his lessoure.

CAlso it is Understante wherre a lawe is
groundyd vpon a presumpcyon / for ys the
presumpcyon be vntrewe / then the lawe is
not to be holden in consycence. And nowe
I haue shewyd the somwhat how that que-
styoun / that is to say wherre the lawe shal be
tewled after consycence / I pray the shewe
me whether there be not lyke dyuersyties in
other lawes byt wyp特 lawe and cōscyence.

Doctorure Yes verily very many wher
of thou hast recyted one byfore / wherre a
thyng that is vntrewe is pleaded and pro-
uyd / in whiche case Jugement muste be gy-
uen accordyngē as well in the lawe Luyule
as in the lawe canon. And another case is
that ys the heire make not his inuento:ye /
he shall be bounde after the lawe Luyule /
to all the dettes though the goodes amount
not to so moche. And the lawe Canon is

Dyaloge.

m.ii.

The. viii.

Not agaynst that law / and yet in cōscyence
the hevyre whiche in the lawes of Englande
is called an executour is not i that case chat
gyd to the dettes / but accordyngc to the val-
ue of the goodes . And nowe I praye the
she we me some cases where consycence shal
be redyed after the lawe . (Student) I
wyll with good wyll shewe the somwhat
as me thynketh therin .

Here foloweth dyuers cases where
conscience is to be orderyd after
the lawe . The . xv . chapyte .



(Student) The eldest so-
ne shall haue and enjoy
his fathers land; at the
cōmon lawe in cōscyenc-
ce / as he shal i the lawe .
And in burghenglyssh
the yonger sonne shal en-
joy the inheritaunce / and that in conscience
And in gaueskynde all the sonnes shall inhe-
ryt the lande togyther as doughters at the
cōmon lawe / that in cōscyence . And there
can be none other cause assygned why con-
scyence in the fyfte casis with the eldest

chapytre. folio. xlviij.

Brother / & in the secōde with the yongest bro-
ther / and in the thyrde case with all the bre-
therne / but bycause the lawe of Englanđe
by reason of dyuers customes doth somtys
me gyue the lande hollyc to the eldest sone /
somtyme to the yongest / & somtyme to all.

¶ Also yf a man of his mere moyon make
a fefement of two acres of lande lyngē in
two severall shires / and makyth luyterey
offseason in the one acre in the name of both
In this case the fesse hathē ryght / but on ſ
lye to y^e acre wherof luyterey offseason was
made bycause he hath no tytle by the lawe /
but yf both actes had ben i one shyre he had
had good ryght to bothe. And in these cases
the dyuersytye of the law makyth the dyuers
ſytye of conſcience.

¶ Also yf a man of his mere moyon make
a fefement of a maner & sayth not to haue
& to holde. &c. With the apputynaunces in
that case the fesse hath ryght to the demesne
landes & to the rentes / yf there be atturna-
ment and to the comons pteynyngē to the
maner: but he hathe noþer ryght to the ad-
uowsons appendaunt yf any be / nor to the
Bylleyns regardat / but yf this terme with
thapputynaunces had ben in the dede / the

feffe had had ryght in conscyence as well to
the aduowsons and vylleynes / as to the re
syde de of the maner: but yf the kynge or
his mere mocyng gyue a maner with the ap
partynaunces / yet the donee hath neyther
ryght in lawe nor conscyence to the aduow
sons nor vylleyns. And the dyuersytie of
the lawe in these cases maketh the dyuersytie
of conscyence.

Also yf a man make a lease for terme of
yeres yeldyng to hym & to his heires a certayne
rent upon condycyon that yf the rent
be behynde by .x. daries. &c. that then it shal
be lawfull to the lessour and his heires to
rente. And after the rent is behynde the les
sour askyth the rent accordyng to the lawe
& it is not payde / the lessour dyeth his heire
entreteth. In this case his entre is lawfull
both in lawe & cōscyience / but yf the lessour
had dyed byfore he had demaūdyd the rent.
And his heire demaūdeth the rent / & bycause
it is not payde he entreteth / In that case his
rente is not lawfull neither in lawe nor
in conscyence.

Also yf the tenuante in dower sole her
lande and dye byfore her come be typte that
come in cōscyience bylongeth to her execus

chapitre. Folio. xl viii.

soutes / & Not to hym in the reueryon / but
otherwyse it is i cōscyēce of grasse & frutes
And the dyuersytie of the lād maketh ther
also the dyuersytie in consycence.

CAlso ys a man seased of landes in his de
mesne as of fee / byquethyth the same by his
last wyl to another / and to his heires and
dyeth / In this case the heire not withstan
dynge the wyl hath tyght to the lande in
consycence. And the reason is bcause the
lāde Judgeth that wyl to be voyde / and
as it is voyde in the lāde / so it is voyde in
consycence.

CAlso ys a man graunte a rente for tyme
of lyfe & make a lease of lande to the same
graunte for tyme of lyfe. And the tenaunt
alenyeth both in fee . In this case he in the
reuereyon hath good tytle to the lande both
in lāde and consycence and not to the rent:
and the reason is bcause the lande by that
alenyacyon is forfeit by the lāde to hym in
the reuereyon and not the rent.

CAddycyon.

CAlso ys landes be gyuen to two men &
to a woman in fe / and after one of the men
entermarryeth with the woman / and alay
neth the lānde & dyeth. In this the woman

hath ryght but only to the thyrde partie / but
yf the man and the woman had ben maryed
togither byfore the fyfte feffement then
the woman notwithstandinge the aliena-
cyon of her husbonde shuld haue had ryghte
in lawe and conſcience to the one halfe of
the lande. And ſo in theſe two caſes conſcien-
ce doth folowe the lawe of the realme.

Alſo yf a man haue two ſones one byfor
te ſpousellys and another after ſpousellys /
and after the father dyeth feſayd of certayn
landes. In that caſe the yonger ſone ſhall
enioye the landes in this realme as heire to
his father bothe in lawe and conſcience.
And the cauſe is bycause the ſone borne aft
ſpousellys / is by the lawe of this realme the
very heire. And the elder ſone is a baſtard.
And of theſe caſes and many other lyke in
the lawes of Englante may be founde the
Silogisme of conſcience / or the trewe Ju-
gement of conſcience in this manner: ſindere
ſis mynyſtreth the maior thus. Ryghte wyse-
neſſe is to be done to euery man: Upon whi-
che maior the lawe of Englante mynyſtryth
the minor thus: the inheritance bylongeth
to the ſone borne after ſpousellys / & not to
the ſone borne byfore ſpousellys / then con-

chapytre.

Folio. xlvi.

scyence maketh the conclusyon & sayth therfore the inheritaunce is in conscience to be gauen to the sonc borne after spousesells. And so in other cases insynyte may be formeyd by the law the Silogisme or the ryght Jugement of cōscyence: Wherefor they that be lernyd in the law of the realme say that in euery case whete any lawe is ordyned for the dysposycion of lādes & goodes / whiche is not agaynst the law of god / nor yet agaist the law of reason / that y^e law byndeth alle them y^e be Under the law i the courte of cōscyence / that is to say in Wardly i his soule. And therfore it is so what to meruayle that spyrituell men haue not endeuored them self intyme past to haue more knowldge of the kynges lawes then they haue done / or that they yet do / for by the ygnorance therof they be oft tymes ygnoraunt of that / that shuld ordre them according to ryght & Justyce: as well concernyng them selfe as other that come to them for councyll. And nowde for as moche as I haue answched to thy questyons as well as I can / I praye the that thou wylte shew me thy oppynyon in divers cases formyd vpon the lawe of Englande wherin I am in doute / what is to be

Dyaloge.

n.i.

The.vxi.

holden therin in cōscyence. **C** Doctoure) shē
me me thy questyonis / and I wyl saye as
me thynketh therin.

C The fyfte quescyon of the student.

The.vxi.chaptere.

Student) yf an infaunte that
is of the age of .xx. yere and
hath reason & wysdom to go
uerne hym selff sellych his lā
de and with the money ther
of b̄reth other lande of greater value then
the fyfth was and takyth the p̄ofyttes ther
of / whether may that infaunte aske his fyfth
lande agayne in consycnce / as he may by
the lawe. **C** Doctoure) what thynkest thou
in that quescyon. **C** Student) me seynyr
that for as moche as the lawe of Englannde
in this artyle is groundyd upon a presump
cyon / that is to saye that infauntes com
monly afore they be of the age of .xxi. yeres
be not able to gouernc them selfe / that yet
for as moche as that presumpcyon sayleth
in this infaunte that he may not in this cas
se with consycnce aske the lande agayne /
that he hath sold to his great auantage as

Byfore apperyth. [Doctoure] Is not this
sale of the infaunte and the feffement ma-
de therupon ys any were vnydable in the
laude. [Student] Yes verylyc. [Docto^r]
And ys the feffe haue no ryght by the bar-
gayne / nor by the feffement made therupon:
Wherby shulde he then haue ryght thereto as
thou thyngest. [Student] By cōscyence as
me thyngeth for the reason that I haue ma-
de byfore. [Doctoure] And vpon what
laude shuld that cōscyence be groudyd that
thou spekyst of / for it can not be groundyd
by the laude of the realme as thou hast sayd
thy selfe. And me thyngeth that it can not
be groudyd vpon the laud of god / nor vpon
the laude of reason / for feffementes nor con-
tractes be not groudyd vpon neyther of tho
laudes / but vpon the laud of man. [Stu-
dent] after the laud of proprietye was ordain-
ned / the people myght not conueniently sy-
ue togyther without contractes / and therfo-
re it semyth that contractes be groudyd vpon
the laude of reason / or at the leste vpon the
laude that is called Jus gentium. [Doc-
toure] though contractes be groudyd vpon
that laude that is called Jus gentium / by
cause they be so necessarye and so generall

amoge all people / yet that prouyeth not that
contractes be groundyd vpon the lawe of
reason / for thoughc that lawe called Ius
gentium be moche necessarye for the people
yet it may be chaungyd. And therfore yf it
were ordayneid by statute that there shulde
be no sale of lande / ne no cōtracte of goodis /
and yf any were that it shulde be voyde / so
that euery man shuld contyne vnde stylle sea-
syd of his landes / & possessyd of his goodes /
the statute were good. And then yf a man
agaynst that statute solde his lande for a
summe of moncy / yet the seller myghte law
fully retayne his lande accordyng to the sta-
tute. And then he were bounde to no more /
but to repay the money that he receyued w^t
resonable expences in that behalfe / and so
in lyke w^tseme thynketh that in this case the
infaunte may with good cōscyence rentre
in to his fyfte lande bycause the cōtracte af-
ter the maymcs of the lawe of the realme
is voyde / for as I haue herde the maym-
cs of the lawe be of as great strength in
the lawe as statutes. And so me thynketh
that in this case the infaunte is bounde to no
more / but onlye to repay the money to hym
that he solde his lande unto / with suche re-

sonable cost; and charges as he hath sustayned by reason of the same. but ys a man sell his lande by a suffycyent and lawfull contracte though he there lacketh luyerye of seasoun or such other solempnyties of the lawde yet the seller is bounde in conscience to per forme the contracte / but in this case the contracte is insuffycyent / and so me thynketh great dyuersytie bte wyxte the cases.

Student) For this tymme I holde me contentyd with thy oppynyon.

CThe seconde questyon of the student. The. xvii.chapytre.

Student) Yf a man that hathe lansdes for terme of lyfe be impanellyd upon an inquest / & therupon lesyth yssues and dyeth / whether may tho yssues be leuyed upon hym in the reuercyon in coscience / as they may be by the lawd. **D**oc toure) Yf they may be leuyed by the lawde / what is the cause why thou doest doute whether they may be leuyed by coscience. **S**tudent) for there is a maynym in the lawdes of Englannde / that wher two tytles ronne togidher / the eldest tytle shal be preservyd.

And in this case the tytle of hym in the res
uercyon is byfore the tytle of the forfetour
of the yssues. And therfore I doute soms
what whether they maye be lawfully leuy
ed. **D**octor by y^e reason it semyth thou
arte in doute what the lawe is in this case/
but that must necessaryly be knowen / for
els it were in dayne to argue what coscys
ence wyl therin. **S**tudent it is certayne
that the lawe is suche / & so it is lyke wyse yf
the husbonde forfet yssues / & dye / tho yssues
shalbe leuyed on the landes of the wyfe.

Doctor And yf the lawe be suche it se
myth that conscience is so in lyke wyse / for
syth it is the lawe that for execucion of Ju
stice euery man shal be ipanellyd when ne
de requyret it semyth resonable: that yf he
wyl not appere that he shuld haue some pu
nishment for his not apperaunce: for els
the law shuld be clerly frustrat in y^e poynte
And that payne as I haue herde is that he
shall lese yssues to the kyng for his not ap
peraunce / wherfore it semyth not inconueny
ent nor agaynst conscience though the law
be that tho yssues shall be leuyed of hym in
the reuercyon / for that codycyon was secret
lye understande in the lawe to passe with

chappitre. folio. lii.

the lease wher the lease was made. And therfore it is for the lessoure to be ware and to preuenient that daunger at the makyng of the lease / or els it shaff be aiuged his owne defaute. And then this petyculer mayyme wherby sucheyssues shall be leuyed vpon hym in the reuercyon is a petyculer excep^cyon in the law of Englande from that generall mayyme that thou haste remembred byfor^e / that is to say that wher two tyiles tonne togidher / that the eldest tyile shall be prefertyd / and so in this case that generall mayyme in this poynte shall holde no pla^cce nother in lawe nor in consciencie / for by this petyculer mayyme the strenght of that generall mayyme is restrained to eury intent / that is to saye as well in lawe as in consciencie.

CThe thirde questron of the student.

The. xxiiii.chappitre.

Student) Yf a tenaunt for terme of lyfe / or for terme of yeres do waste wherby they be bounde by the lawe to yelde to hym i the reuercyon treble damages. And shall also forfeit the place wasted /

The. xxiii.

Whether is he also bounde in conscience to pay tho damages & to restore the place wasted immedyately after the waste done / as he is the syngle damages / or that he is not bounde thereto tyll the treble damages and the place wasted be recoueryd in the kynges coute . **D**octoure) byfore Jugement gyuen of the treble damages and of the place wasted he is not bounde in cōscience to pay them . For it is Uncertayne what he shulde pay / but it suffyseth that he be redye tyl Jugement be gyuen to yelde damages accordynge to the value of the waste / but after the Jugement gyuen / he is bounden in conscience to yelde the treble damages / and also the place wasted . And the same lawe is in all statutes penall / that is to saye that no man is bounde in conscience to pay the penaltys tyl it be recoueryd by the lawe .

Student) Whether maye he that hath offendyd agaynst such a statute penal defende the accyon and hyndre the Jugement to the intent he wolde not paye the penaltys / but only the syngle damages . **D**octoure) If the accyon be taken ryght wyselfe accordynge to the statute / & vpon a Juste cause the defendant may in no wyse defende the

chapytre.

Folio.liii.

accyon/ones he haue a trewe dylatory mas-
ter to plede: whiche shuld be hurtful to hym
ys he pledyd it not/ though he be not bounde
to pay the penaltie tyll it be recoueryd.

CThe fourth questyon of the stu-
dent. The.xviii.chapytre.



Student) If a man infesse another in certayne Lande
Upon condycyon that ys he
infesse any other: that it shal
be lawfull for the feffour &
his heires to reentre. &c. Whether is this con-
dycyon good in coscience though it be voy-
de in the lawe. **D**octor) What is the cau-
se why this condycyon is voyde in the lawe.
Student) The cause is this/ by the lawe
it is incydent to euery state of fee simple/
that he that hath that estate may lawfully
by the lawe and by the gyfte of the feffoure
make a feffement therof. And then when
the feffoure restrayneth hym after that he
shall make no feffement to no man agaynst
his owne former graunt/ and also agaynst
the purytic of the state of a fee simple / the
lawe Iugeth the condycyon to be voyde/

Dyaloge.

o.i.

but ys the condycyon had ben that he shuld
not haue infessfed such a man / or such a
man that condycyon hadde ben good / for
yet he myghte infesse other . **(Doctoure)**
though the sayde condycyon be agaynst the
effete of the state of a fee syngle / and also
agaynst the lawe . Neuerthelesse it is not a/
gaynst the intent that the partyes agreed a/
pon / & that at the tyme of the luyeray . And
for as moche as the intent of the ptyes was
that ys the fesse infessfed any man of the la/
de / that then the fessoure shuld entre / and to
that intent the fesse toke the estate and af/
ter breke the intent it semyth that the lande
in conscience shulde returne to the fessoure .
(Student) the intent of the partyes in the
lawes of Englannde is voyde in many ca/
ses / that is to say ys it be not orderyd accor/
dynge to the law . As ys a man of his mere
mocion without any recompence intendyn/
ge to gyue landes to another and to his heyr/
es make a dede vnto hym / wherby he gy/
ueth hym the landes to haue and to holde to
hym for cuer intendynge that by that dede
(for euer) the fesse shulde haue the lande
to hym and to his heyras / in this case his in/
tent is voyde / and the other shall haue the

lande only for termes of lyfe. Also yf a man
gyue lades to another and to his heires for
termes of .xx. yeres intendyng that yf the les
see dye within the terme / that then his heires
shulde enioye the lande durynge the terme.
In this case his intent is voyde / for by the
laude of the teame all chatellys reall & per
sonall shall go to the executors / and not
to the heire. Also yf a man gyue landes to
a man and to his wyfe / & to the thirde per
sone intendyng that euery of them shulde
take the thirde parte of the lande as thre com
mon persons shuld his intent is voyde / for
the husbonde & the wyfe as one person in
the laude shall take onylle the one halfe and
the thirde persone the other halfe / but these
cases be alway to be vnderstāde where the
sayd estates be made without any recom
pence. And for as moche as in this prynce
pall case / the intent of the fefour is ground
yd agaynst the laude: & that there is no re
compence appoyntyd for the fefementme
thynkyng yf the fefour hath neyther ryght
to the lande by laude nor consciencie / for yf
he shuld haue it by consciencie / that coscienc
ie shuld be groundyd vpon the laude of reas
son & that it can not / for condycions be not

Dyaloge.

o.ii.

The. xviii.

grouyngd vpon the law of treason / but vpon
the maymyes & custome of the realme. And
therfore it myghte be ordaynyd by statute,
that all codycyons made vpon lande shulde
be voyde. And when a codycyon is voyde
by the maymyes of the lawe / it is as felly
voyde to euery intent as ys it were made
voyde by statute / & so me thynkith that in
this case the feffour hath no ryght to the la
de i lawe nor in conscience. (Doctor) I
am content thy oppynyon stade till we shal
haue hereafter a better leasure to speke fer
ther in this mater.

The. viii. questyon of the student.

The. xxv. chapytre.



Tudet vs a syne with
proclamacyon be leuy
ed accordyng to the sta
tute and no clayme ma
de within. v. yeres. &c.
Wherher is the ryght of
a straunger exyncted
therby in conscience / as it is in the lawe.
(Doctor) vpon what consideracion
was that statute made. (Student) that

chapytre. Folio. l^v.

the right of landes and tenementes / myght
be the more certaynly knowen and not to
beso vncertayne as they were byforc that
statute. (Doctoure) and when any lawe
of man is made for a comon welth / or for a
good peace and quietnes of the people / or
for any inconuenyence or hurte to be sauyd
from them / that lawe is good thoughe per
case it extynct the ryght of a straunger and
muste be kept in the courte of consciencie for
as it is sayd byforc in the. iii. chapitre / By
lawes ryght wylsely made by man : it appe
ryth who hath ryght to landes and goodes:
so what soever a man hath by suche a lawe
he hath it ryght wylsely . And what so ever
he holdeth agaynst suche a lawe he holdyth
vnyrght wylsely . And furthermore as it is
sayde there all lawes made by man / whiche
be not contrarie to the law of god must
be obseruyd & kepte / and that in consciencie.
And he that dyspyseth them dyspyseth god:
and he that resyfseth them resyfseth god:
also it is to be vnderstande that possessi
ons and the ryght therof be subiecte to the
lawes / so that they therfore with a cause re
sonable maye be translated & alteryd from
one man to another by the acte of the lawe.

Dyaloge.

Q. iii.

And of this cosyderacion that lawe is grouyd that by a contracte made in feyres and markettys the properte is alteryd excepte the properte be to the kynge / so that the byer paye tolle / or do such other thynges as is a customyd there to be done vpon such contracts / and that the byer knoweth not the former properte. And in the lawe Llywle there is a lyke lawe that ys a man haue another mans good with a tytle thre vere kynge yf he hath ryght to it / he hath the very ryght unto the thyng: and that was made for a lawe to the intent that the properte & ryght of thyngesshuld not be Uncertayne / and that varyaunce and stryfe shulde not be amonge the people. And for as moche as the sayd statute was ordayned to gyue a certeyntyte of tytle in the landes & tenementes comprysyd in the fyne / It semyth that that fyne extynctyth the tytle of all other / as well in consciencie as it dothe in the lawe. And sythe I haue answeryd to thy questyon I praye the let me knowe thy mynde in one questyon concernyng Taylled landes and then I wyll trouble the noo ferther at this tyme.

chapytre. folio. l vi.

A questyon made by the Doctorre / how
certayne recouertes that be vsyd in the
Kynges courtes to defete Taylors
lade may stande with cōscyence.

The xxviij chapytre.



Octoure) I haue herde say
that whan a man that is
seasyd of landes in the tay
fe sellyth the lande. That
it is comonly vsyd that he
that byeth the lande shall
for his suertye / and for the auoydying of the
tayle in that byhalfe / cause some of his fren
des to recouer the sayde landes agaynst the
sayd tenaunte in tayle: Whiche recouerte as
I haue ben credably enformyd shal be had
in this maner / the demaundauntes shall
suppose in theyr wrytte and declaracion /
that the tenaunt hath no entre / but by suche
a straunger as the byer shall fynde to name
and appoynte / Wherein dede the demaundaun
tes never had possessyon therof / nor yet
the sayd straunger. And therupon the sayde
tenaunte in tayle shall appere in the courte
and by couyn and by assent of the partyes /
shall vouch to warraunte one that he knos

Weth well hath no thyng to yesde in value
 And that vouchee shall appere and the de-
 maundauntes shall declare agaynst hym /
 & the:upon he shall take a day to enperle in
 the same tyme: & at that day by assent & cos-
 iyn of the partyes / he shall make defaulste
 Upon whiche defaulste bycause it is a default
 in desperte of the courte / the demaundauntes
 shall haue Jugement to recouer agaynst the
 tenant in tayle / and he ouer in value a/
 gaynst the vouchee and this Jugement and
 recouerye in value / is taken for a barre of
 the tayle for euer / how may it therfore be ta-
 ken that that lawe standeth with consciencie
 that as it scineth also weth and fauouryth
 suche sayned recoueryes. ¶ Student) yf the
 tenant in tayle sell the lade for a certaynne
 summe of money as is agreed byt bwyxte them
 at such a pryce as is comonly vsed of other
 lades / & for the suertye of the sale sufferyth
 suche a recouerye as is aforesayd / what is
 the cause that mouyth the to doubt whether
 the sayd contracte or the recouery made theru-
 pon: for the suertye of the byer that hath true-
 ly payde his money for the same shuld stan-
 de with consciencie. ¶ Doctor) I wothyn-
 ges cause me to doute therin / one is for that

that after our Lorde had gyuen the lande of
syfeste to Abraham and to his sedc / that is
to say to his chyldren in possessyon al daye
to contynue / he sayde to Moyses as it appe-
ryth scutic. xv v. the lande shal not be sol-
de for euer / for it is myne. And then our lor-
de assygned a certayne maner howe the lan-
de myght be redemyd in the yere of Jubylie
yfir were soldē before: & for as moch as our
Lorde wold y' the lāde so gyuen to Abraham
& his chyldren shuld not be soldē for euer / it
semyneth that he doth agaynst the ensāple of
god y' alsyneth or sellyth the lande y' is gy-
uen to hym & to his chyldren as lāds; Intay-
led be gyuen. Another cause is this: it appe-
ryth by the cōmaundemēt of god that thou
shalte not coueyte the hōuse of thy neygh-
boure. &c. And yf the cōcupiscence be phyby-
ted more stronger the vnlawfull takyng
& withholdyng therof is prophbyt / and for
as moche as tayled lande whan the arnches-
stre is deed is a thyng that of ryght is belo-
gynge to his heire / for that he is heire accor-
dynge to the gyfte / howe maye that lande
with ryght or cōscyece be holden from hym.
CStudent) not withstandyng that proph-
etyon of almyghty god: wherby the lande

The xxvi.

that was gyuen to Abraham & to his seed
myghte not be alwyed for euer / yet landes
within walys townes myght lawfullye
be alwyed for euer / except the landes of the
leuytes as it apperyth in the sayd Chapitre
of leuitic. xxv. And so it apperyth that the
sayd p̄myssyon was not generall for euer
in place: and that amonge the Iewes. And
it apperyth also that it was gyuen only for
Abraham and his chylde / and so it was
not generall to all people. And it apperyth
also that it extendyd not but only to the lan-
de of promyssyon / as it apperyth by the wor-
des of the sayd Chapitre / Where it is sayde
thus all the Regyon of your possession shal
be solde vnder the codycyon of redemyng /
Wherby apperyth that landes in other cou-
tres be not bounde to that condicion / & as
they be not bounde to that codycyon: by the
same reason / it foloweth that they be not
bounde to the same successyon. Therfore the
sayde lawe that wyll that the lande gyuen
to Abraham and to his seed shall not be sol-
de for euer / byndeth no lande out of the lan-
de of promyssyon / and some men wyll say
that sythen the passyon of oure Lorde was
promulgate & knowen it byndeth not there.

And to thy seconde reason whiche is grouwyn
dyd upon the comandement of god: It must
nedes be graunted that it is not lawfull to
any man unlawfully to couete the hōuse
of his neyghbour / & that then more stronger
he may not unlawfully take it from hym:
but then it remayneth for the yet to proue,
hōwe in this case this tayled lande that is
solde by his auncestre / and wherof a recoue-
ry is had of recorde in the kyngis courte may
be sayd the lande of the heires. (Doctor)
that may be prouyd by the lawe of the realme,
me / that is to say by the statute of Westme-
ster the seconde the fyfte chapytre / where it
is sayd thus. The wyll of the gyuer expref-
sely contayned in the dede of his gyfte shal
be from hensforh obseruyd / so that they to
whom the tenementes be so gyuen shall not
haue powter to alyen / but yf the lades after
theyr deth shall remayne to theyr yssue or res-
tourne to the donoure yf the yssue fayle / by
the whiche statute it appertyneth euydēly that
though they to whom the tenementes were
so gyuen alyened them awaie / that yet ne-
uerthelesse they in lawe and consciencie by
reasoun of the sayd statute ought to remayn
to the heires accordyng to the gyfte / for it is

holden comonly by all Doctoures that the
comauementis and reuoles of the lawe of
man or of a posytyue lawe that is lawfull
by made bynde al that be subiectes to that
lawe accordyng to the mynde of the maker
and that in the courte of coscience. (Student)
doest thou thynke that yf a man offend
de agaynst a statute penall that he offend
dyth in coscience admitt that he do it not
of a wylfull dysobedience for that he wylle
not obey the lawe / for yf he do it of dysobe
dience I thynke he offendeth. (Doctor)
Yf it be but only a statute that is called po
pular it byndyth not in coscience to the pay
ment of the penalitye / vylle it be recoueryd
by the lawe. And than it doth bynde in con
science / but yf a statute be made pryncipal
ly to remedy the hurte of the partie / and for
that hurte it gyueth a penalitye to the partie
in that case the offendour of the statute is bou
nde imedyatlye to restore the damages to the
value of the hurte as it is upon the statute
of waste / but the penalitye aboue the hurte
he is not bounde to paye vylle Jugement be
gyuen as it is sayde byfore / but statutes by
the whiche it is assygned who shall haue
tryght or properte to these landes and tench

mentis/ or to these goodes or catalles yf it be
not agaynst the lawe of god / nor agaynst
the lawe of reason bynde all theym that be
subject to the lawe in lawe and cōscyence/
(suche a statute is the statut of Westmester
the ii. wherof we haue treatyd byfore/ wher
fore it must be obseruyd i cōscyence. ¶ **S**tudent) but some holde that the sayd statute of
Westmester the ii. was made of a syngularitie &
p̄sumpcyon of many that were at the sayd
Parliament for exalstyng & magnysyeng
of theyr owne blode: & therfore they say that
that statute made by suche a presumpcyon
byndyth not in cōscyence. ¶ **D**octor) It is
very peryllous to Iuge for certayne that
the sayd statute was made of suche a p̄sum
pcyon as thou spekest of/ for there be many
consydacryons to proue that the sayde sta
tute was not made of suche a presuptcyon
but rather of a very good mynde of all the
Parlyament/ or at the leste of the more par
te therof/ and for the comon welth of al the
realme / and fyreste in the kyngē the whiche
in the sayd Parlyament was the heide and
moste chyef & pryncipall partie of the Par
lyament as he is in euery Parlyament/ can
not be noted no suche intent / for it is not

Dyaloge.

p.iii.

necessari nor it was not then i use that lades
des of the crowne shulde be entayled: and
in spypytuall men ne yet in certayne burge
syes and cytyzens of the sayd Parlyament
whiche at that tyme had no lande, there can
be noted no suche syngulare tyte / nor yet in
the noble men & gentylmen nor suche other
as were of the sayde Parlyament and had
landes and tenementes / It is not good to
Iuge in certayne that they dyd it of suche a
presumpcyon / but it is good and expedyent
in this case as it is in other cases that he in
doubte to holde the furer waye / and that is
that it was made of charytie / to the intent
that he no: the heires of hym to whom the
lande was gyuen shuld not fall in to extre
me pouertye / and therby haplye to comme in
to offence agaynst god / and though it were
trewe as they saye that it was not made of
charytie but of presumpcion & syngulare tyte
as they speke of. Neuerthelesse for as moche
as the statute is not against the lawe of god
nor agaynst the lawe of reason it muste be
obserued by all them that be subgiettes vnto
that lawe / Ifor as John Herson sayth
in the treatyse that he entituleth in latyn
De vita spiritualli aie: the fourth lesson

the thyrd corollarye : sayth that god wylle
that makers of lawes iuge only of outward
de thynges & reserue secrete thynges to hym.
And so it apperyth that man may not iuge
of the inward intent of the deed, but of such
thyngs as be apparaunte / and certayne it
is that it is not apparaunte that there was
any such corruption entente in the makers of
the sayde statute / howe maye it therfore be
sayd that that lawe is good or ryghtlyse/
that not only suffreth such thyngs agaynst
the statute / but also agaynst the comande-
ment of god. ¶ **H**@student) To that some an-
swere and say: that when the lande is sold
& a recouery is had therupon in the kynges
courte of record: that it suffiseth to batt the
tayle in conscience / for they saye that as the
tayle was fyre ordayned by the lawe. So
they saye that by the lawe it is annulled a/
gaine. ¶ **D**octorure) be thou thy selfe Juge
yn y^t case there be lyke auctoriteie i the ma-
kyng of the tayle as there is in the admis-
sione therof / for it was ordayned by aucto-
rytie of Parlyament / the whiche is alway
taken for the most highe courte in this real-
me byfor any other / and it is annulled by a
false supposell: for that that they that be na-

med demandants shuld haue ryght to the la
de whiche in trouth they never had ryght ther
to: Wherupō foloweth a false supposel i the
Wryt / & a false supposell in the declaracyon
& a vouchet to warrante by couyn of such a
personne as hath no thyng to yelde in value
& therupon by couyn and collucyon of the
partyes foloweth the default of the vouchee:
by the whiche defaulte the Jugement shall
be gyuen / And so all that Jugement is dety
uyed & groyndyd of the vnlire supposel & co
uyn of the partyes / Wherby the lawe of the
realme that hath ordayned such a Wryt of
entre to helpe them that haue ryght to lades
or tentis is defraudyd: the courte is desceyuyd
the heyre is dishetited: & as it is to doubte the
wyer & the seller and theyr heyras & assygnes
hauyng knowldege of the tayle be bounde
to restytucion / and verrylye I haue harde
many tymes / that after the lawe of the real
me suche recoueryes shuld be no bart to the
heyre in the tayle / ys the lawe of the realme
myght be therin idifferently harde. ¶ **S**tus
dant) I can not se but that after the lawe of
the realme it is a bart of the tayle / for when
the tenaunte in tayle hath vouched to war
tauntye / and the vouchee hathe appertyd &

chapitre.

Folio. lxi.

entred in to the warrantye / & after hath ma
be defaute in despyte of the courte: wherupō
Iugement is gyuen for the demaundaunt
agaynst the tenaūt / & for the tenaūt that he
shal recouer in value agaynst the Douchee /
the heyre in the tayle shuld after bryngē his
Formedone and recouer the landes Intayl
led / and after the Douchee purchaseth lans
des / than shuld the heyre also haue execrys
on agaynst hym to the value of the landes
entayled as heyre to his auncestre that was
tenaunt in the fyfte accyon: and so he shuld
haue his owne landes / and also the landes
recouertyd in value: and therfore bycause of
that psumpcyon that the Douchee may pur
chase landes after the Iugement / some be of
oppynyon that it is in the lawe a good barre
of the tayle. (Doctor) I suppose that in
that case that thou hast put that the Douchē
may barre the heyre in tayle of his recouerie
in value bycause he hath recouertyd the fyfth
landes. Neuerthelesse I wyll take a respy
te to be aduysed of that recouerye in value.
And yf thou can yet shewe me any other co
syderacyon why the sayde recoueryes shuld
stande with consequnce / I praye the let me
here thy conceyte therin / for the multytude

Dyaloge.

q.t.

The xxvii.

of the sayd recoueryes is so great that it wes
te great pytie that all they shuld be bounde
to restytucyon that haue landes by such recoueryes syth there is none that as far as I
can here dysposeth them to istorc. ¶ Studēt) some men make an other reason to pro
ue that the sayd recoueryes shuld be suffycy
ent by the law to avoyde the state of west.
then as if they be sufficiēt thereto they be suf
fycyent in consciencie. ¶ Doctor) What is
theyr reason therin. ¶ Studēt) In the vii.
yeare of kyngē Henry the viii. the liii. chapp
itre amonge other thynges it is enactēd, that
all recouerers theyr heires & assygnes may
aduowe and iustifie for tentes seruyce & cu
stomes by them recoueryd: as they agaynſt
whome they recoueryd myght haue done:
And then they saye that whch the Parlyas
ment gaue to such recouerers auctorite to
aduowe and iustifie for such tentes custo
mes and seruyces as they recoueryd / that
the entent of the parlyament was that such
recouerers shulde haue ryght to that: for the
whiche they shuld aduowe or iustifie: for
els they saye that it shuld be in dayne to gy
ue them such powder / and that the Parlyas
ment shuld els be taken in maner as forys

fyers of wrongfull tytles: and so they saye
that suche recouerers by reason of the sayde
statute haue ryght by the law. [Doctor]
that statute as it semyth was made only to
gyue to the recouerers a forme to aduowe &
iustifie / whiche they had not byfore though
they had recouerd vpon a good tytle. And
the cause why they had no forme to aduow
or iustifie byfore the sayde statute was for
as moche as the recouerers dyd not by the
pretence of theyr accion affirme the possessi
on of hym or them agaynst whom they re
coueryd / no: claymed not by them / but ra
ther dysfermyd and dystroyed theyr astate.
And therfore they can not alege any conty
nuance of theyr tytle by them / as they may
that haue rentes or seruyces / or suche other
of the graunte of other by dede or by fyne.
And therfore as it semyth the most pryncey
pall intent of that statute was : that suche
recouerers shuld auowe & iustifie for rents
seruyces & customes as they shuld or myght
do that had them by fyne or dede: not hauyn
ge any respect as it semyth whether they re
coueryd agaynst tenaunte in fee simple or
in fee tayle / nor whether the recouertes we
re had vpon a ryghtful tytle. And therfore

Dyaloge.

q.u.

as me semygh the sayd estatut neyther affir
myth nor dyssaffirmhyth the tytis of the res
couertyes wherby they do aduowde for ys a/
ny man had ryght byfore the recouerte that
ryght shulde remayne vnto hym notwithstanding
standynge the sayd statute: & so me semygh
that the tytis of them that haue the landes
entaylyd by suche recouertyes is no thyng
fortysyd nor affirmyd by the sayd estatute
but y^e they are in the same case as they were
byfore: What thynkest thou therin. ¶ Thus
dient this mater is great / for as thou sayste
there be so many that haue tayled lades by
suche recouertyes / that it were great pyc
heuynes to condempne so many persones &
to Iuge that they all were bounde to resty
tucyon: For I thynke there be but fewe in
this realme that haue lades of any notable
value: but that they or theyr auncestours /
or som other by whom they claym haue had
parte therof by suche recouertyes / In so mos
che that lordes spyrituall and temporall /
knygthes / squyres ryche men / & poore / Mo
nasteryes / Collegye / and hospytallys haue
suche landes / for suche recouertyes haue ben
vsed of longe tyme / Who may thynke ther
for withoute great heuynes that so many

chapytre. folio. xviii.

men shuld be bounde to testytacyon / & that yet as thou sayst / no man disposeth hym to make testytacyon . And so I am in maner perplexed and wot not what to say in this case / but that yet I truste that ygnoraunce may excuse many persones in this behalfe .

Doctor ygnoraunce of the dede may excuse / but ygnoraunce of the lawe excusyth not but it be inuyncible / that is to say that they haue done that in them is to knowe the trouth as to councell with lernyd men : and to aske them what the law is i that behalfe and ys they answe them that they may do this or that lawfully / then they bc therby excused in conscience / but yet i maners law they be not therby dyscharged / but they that haue taken vpon them to haue knowleg of the lawe be not excused by ygnoraunce of the lawe / ne no more are they that haue a wylfull ygnoraunce and that wold rather be ygnorant then to knowe the trouth . And therfore they wyl not dyspose them to aske any councayl in it / and ys it be of a thyng that is agaynst the lawe of god / or the lawe of reason / no man shal be excused by ygnoraunce / and so therbe be but fewe that be excused by ygnoraunce . **S**tudent what

Dyaloge .

q. iii.

Then shall we condempne so many & so notable men. [Doctor] We shal not condē
 pñe them / but we shall shewe them theyr pe
 tyll. [Student] Yet I trust that theyr daile
 ger is not so great that they shuld be bounde
 to restytucion. For John Herson sayth
 in the sayd boke called De unitate ecclesias
 stica consideratiōe secunda / qđ cōiserto: fa
 cit ius. That is to say a comen errour ma
 kyth a ryght / of whiche word; as it semyth
 some trust may be had / that though it were
 fully admittyd that the sayde recouertyes
 were first had vpon an vnlawful groun
 de and agaynst the good ordre of cōscyencē
 that yet nevertheles for as moche as they ha
 ue ben vſed of longe tyme / so that they ha
 ue ben taken of dyuers men that haue ben
 ryght well servyd in maner as for a lawe /
 that the byers partly be excusyd so that they
 be not bounde to restitucion. And moreover
 it is certayn that that statut of Westm the ii
 nor none other statute made by man can not
 be of greater vertue or strength / than was
 the bonde of matrimony that was ordays
 ned by god / And though that bonde of ma
 trimony was indyssoluble / yet nevertheles
 ses Moyses suffred a byll of refusell to the

Iues / whiche in latyn is called Libellum re
pudic / & so they myght therby forsake theyr
wyfes As it apperith deuteron. xxiii. and
therfore lyke as a dispensacion was su-
tyd agaynst that bonde / so it semythit may
be agaynst this statute. ¶ Doctorite as to
that reason that thou hast last made of a byll
of refusell / let all purchasours of lande here
What our Lorde sayth i the Gospell to the
Iues of that byll of refusell ¶ Mathei. xix.
Where he saythe this / To the hardnes of
your hert / thoysses suffred you to leue your
wyfes / for at the begynnyng it was not so /
of whiche wordes Doctours holde comons
sye that though suche a byll of refusell was
lawfull so that they that refused theyr wy-
fes therby / shulde be without payne in the
laude / that yet it was neuer lawfull so that
it shuld be without synne. And so lykwyse
it may be sayde in this case / that suche recov-
eryes be suffred for the hardnes of the her-
tes of Englysshemen / whiche desyre lande
& possessyons with so great gredynes that
they can not be withdrawne from it nev-
er by the laude of god / nor by the laude of
the realme. And therfore y' ryche men shuld
not take the possessyons of poore men from

them by powder without coloure of tytle /
that is to say either by open dysseson / or by
the onely sale of the tenuant in tayle and so
to hold theym agaynst the expresse wordes
of the statute / such recoueryes haue ben suf-
fred. And though for theyr great multytude
they maye haplye be withoute payne as to
the lawe of the Realme: yet it is to feare that
they be not without offence as agaynst god /
and as to thy other reason that a comoners
cour shulde make a ryght those wordes as
me semyth be to be thus Understante / that
a custome vsed agaynst the lawe of man
shalbe taken in some countes for lawe yf
the people be suffred so to contynue / And
yet some men call such a custome an errour
Bycause that the contynuance of that custome
agaynst the lawe was partlye an errour in
the people / for that that they wold not obey
to the lawe that was made by theyr supe-
ryours to the contrarye of that custome: but
it is to be Understante that the sayd recouer-
yes though they haue ben longe vsed may
not be taken to haue the strenght of a custo-
me / for many as well lernyd as unlernyd
haue alwayes spoken agaynst them and
yet do. And furthermore as I haue herde

say a custome or a prescripcyon in this realme
agaynst the statutes of the realme pre-
uayle not in the lawe. ¶ Student) though
a custome in this Realme preuayleth not a
gaynst a statut as to the lawe / yet it semyth
that it may preuayle agaynst the statute in
conscience / for though ygnorance of a sta-
tute excusyth not in the lawe / neuertheles
it may excuse in cōscyence / and so it semyth
that it may do of a custome . ¶ Doctorute)
But yf such recouertes can not be brought
in to a lawfull custome in the lawe / it se-
myth they may not be brought i to a custom
in conscience / for cōscyence must alway be
groundyd vpon some lawe: and in this ca-
se it can not be groundyd vpon the law of
reason / nor vpon the lawe of god: and ther-
fore yf the law of man setue not / there is no
grounde wherupon conscience in this case
may be groundyd / at the begynnyng of su-
che recouertes they were takyn to be good /
bycause the lawe shuld warraunte them to
be good and not by reason of any custome /
and so yf the reason of the lawe dyll not
setue in tho recouertes / the custome can not
helpe for an evyll custome is to be put a/
waye. And therfore me semyth that tho re-
Dyaloge.

couertes be not withoute offence agaynst god / though haplye for theyr great multy-
tude / and that there shuld not be as it were
a subuersyon of the inheritance of many
in this realme:as wel of spyrituall as tem-
porall / they be withoute Payne i the law of
the realme:except such recouertes as by the
common course of the law / be vnydable i the
law by reason of some use / or of som other
specyal matter / but what Payne that is I
wyl not temerously Juge / but comyt it to
the goodnes of our Lorde whiche Jugement
be very depe & profounde / nor I wyl not
fullie affirme y^e they y^e haue lades by suche
recouertes ought to be compellyd to restytucy-
on / but this semyth to me to be good couencell
that euery man herafter holde that is certayne
and cleue that is vncertayne:and that is
that he kepe hym self from suche recouertes
and then he shalbe fre from all scrupulouss-
nes of conscience / in that behalfe . ¶ **S**tus
dend) It semyth that in this questyon thou
pōderyst greatly the sayd statute of Westm
the ii. and that though it be but onely a law
made by man / that yet for as moche as it is
not agaynst the lawe of reason / nor the law
of god / thou thyngest that it must be hol-

chapytre. folio. sp vi.

ben in conscience / & ouer that as it semyth
thou arte som what in doubte whether those
recoveryes be any bar to the heire i the tay-
le by the law of the realme onles that he ha-
ue in value indeede vpon the boucher / and
that thou wylte therupon take a respyte or
thou shewe thy full mynde therin / & in syke
wyse thou thynkest as I take it that those
recoveryes can not be brought i to a custome
but that the longer that they be suffred to
cōtynue ys they be not good by the lawe the
greater is the offēce agaynst god / And ther-
fore thou ponderyst lytle that custome / but
yet thou agreeest that it is good to spare the
multytude of them that be pastelste a sub-
uercyon of the inheritaunce of many of this
realme myght folowd and great stryfe and
varyauice also: ys they shulde be adnusled
for the tym past: except ther be any other es-
pecyal cause to auoyde them by the law as
thou hast touchyd i thy last reason / but thou
thynkyst that it were good that from hens-
forth such recoveryes shuld be cleresly pro-
hybyt and not be suffred to be had i vse as
they haue ben byfore: and thou coundeyllest
all men therfore to refrayne them self from
such recoveryes herafter. [Doctor] thou-

Dyaloge.

r.ii.

The. xxviii.

takkest well that I haue sayd & accordyngē
as I haue mente it. ¶ Student) nowe I
pray the syth I haue hardē thy questyon of
these recoueryes accordyngē to thy desyre yt
thou woldest answe me to some pertyculār
questyons concertenynge tayled landes:
Wherof thou hast at this tymc gyuen vs oc
casyon to speke. ¶ Doctor) shew me tho
se questyons: & I wyl shewe the my mynde
therin with good wyll.

¶ The fyfth questyon of the student
concernynge tayled landes.

The. xxviii.chaplyre.



Student) If a dyssesour
make a gyft in the tayle
to John at style & John
at style for the redemyn
ge of the tylde of the dys
sesye agreyth with hym
that he shall haue a cer
ayne rente out of the same lande to hym &
to his heires/and for the suertye of that rent
it is dyuyded that the dyssesye shall release
his ryght in the lande. &c. and that such a re
couery as we haue spoken of byfore shalbe

chappytre. folio. xvii.

had agaynst the sayde John at style to the
use of the payment of the sayd rent and of
the former tayle whether standyth that reco
uery well with conscience or not as thou
thyngest. [Doctor] I suppose it doth for
it is made for the strength and suertye of the
tayle whiche the dyssesye myght haue certe
ly defacdyd and auoydyd ys he wold / and
therfore as I thyngke ys the sayde John at
style had grauntyd to the dyssesye only by
his dede a certayne rent for the releaseynge
of his tytle that graunt shuld haue bounde
the heires in the tayle for euer. And then ys
the dyssesye for his more suertye wyl haue
suche a recouerte as byforc appertyth it self
myght that that recouerte standeth with good
conscience. [Student] It semyeth that thy
oppynyon is ryght good i this mater. And
so it appertyth that with a reasonable cause
some partyuler recouertes may stāde both
with lawe & coscience to barre a tayle.

..

[The seconde questyon of the stu
dent concernyng tayled landes.

The xviii.chappre.

..

Dyaloge.

c.iii.

The xxviii.



(Tudent) If tenaunt in sayle suffre a recouery agaynst hym of the landes entayled to the entent that the recouerers shall stande seased ther of to the vse of a certayne woman whom he entendyth to take to his wyfe / for termen of her lyfe / and after to the vse of the fyfte tayle: & after he maryeth the same woman / whether standyth that recouery with coscience though other recoueryes upon bargaynes and sales dyd not. (Doctoure) It ses mynþ yes / for though the statut be / that they to whom the tenementes be so gyuen shuld not haue power to alyen / but that the lades after theyr deth shuld remayne to theyr yssues or reuert to the donouts yf the yssues sayled: yet yf he to whom the lades were so gyuen take a wyfe and dyeth seased without heire of his body / and the donout entre the woman shall recouer agaynst hym the thyrd parte to holde in the name of her dower for termen of her lyfe though the tayle be determined / & the same lade is of tenaunte by the curtesy: that is to say of hym that happy mynþ to marye one that is an enheretrix of the landes entayled: and they haue yssue the

chapytre. folio. xviii.

Wyfe dyeth and the yssue dyeth / he shall holde the landes for terme of his lyfe as tenante by the curtesye / notwithstandinge the wordes of the statute whiche saye that after the deth of the tenaunt in tayle without yssue the landes shall reuert to the donour / & I thynke the cause is bycause the intent of that statute shall not be taken that it inten^sdyd to put awaie suche tytles as the lawde shulde gyue by reason of the tayle / and so it semyth that a lyke intent of the statute shal be taken for ioyntoures / for els the statute myght be somtyme a lettyng of matrymony / and it is not lyke that the statute inten^sdyd so / and therfore it semyth that by the onely deed of the tenaunt in tayle a ioyntour maye be made by the intent of the statute / though the wordes of the statute serue not exprestly for it / for many tymes the intent of the letter shalbe taken and not the bare letter / as it apperyth in the same statute where it is sayd that he to whom the landes be gyuen shall haue no powder to alyen / yet the same statut is construed that neyther he nor his heires of his body shall haue no powder to alyen / and so me thynketh that suche an intent shal be taken here for sawyng of ioyntour

The xxviiiij.

tours. **T**Student) trouth it is that somtyme
me the intent of a statute shall be taken fer-
ther than the expresse letter stretchyth / but
yet there maye no intent be taken agaynst
the expresse wordes of the statute / for that
shuld be rather an interpretacyon of the sta-
tute then an cyposycyon / and it can not be
resonably taken / but that the intent of the
makers of the statut was y^e the lude shuld
remayne contynually in the heyres of the tay-
le as longe as the tayle enduryth / & there can
no ioyntour be made neyther by dede nor by
recoverye / but that the tayle must therby be
dyscontynued / & therfore this case of Joyn-
toure is not lyke to the sayd cases of tenant
in dower or tenaunt by the curtesye / for the
tytle of dower and of tenauncy by the cur-
tesye groweth moste specially by the contyn-
uaunce of the possessyon in the heyres of the
tayle / but it is not so of Joyntour / & ther-
fore by the only dede of the tenaunte in tay-
le / there may no Joyntour be lawfully ma-
de agaynst the expresse wordes of the statu-
te. And yf there be any made by w^eaye of re-
coverye / then it semyth that it muste be put
under the same rewle as other recoveryes
muste be of landes intayled.

CThe thyrd questyon of the student/
concernyng tayled landes.

The. xxix. Chapytre.

Student) Yf John at noke
beyng seasyd of landes in fee
of his mere moyon make a
seoffement of a certayne lan-
des to the intent that the feof-
fee shall therof make a gyfte to the sayde
John at noke to haue to hym and to his he-
ires of his body and they make the gyfte ac-
cordynge. And after the sayd John at noke
fallyth in to dette / Wherfore he is taken and
put in pryon / and therupon for paymēt of
his dettes he sellyth the same lande / and fol-
suertye of the byer he sufferyth a recouercye
to be had agaynst hym in such maner as by
fore appertyth / Whether standeth that recou-
rye with conscyence or not. **[Doctoure]** I
wold here make a lytell dygressyon to aske
the another questyon or that I made an-
swere to thynge: that is to say to sele thy myn-
de howe that lawe by the whiche the body
of the dettoure shall be taken and caste in to
pryon there to remayne tyll he haue payde
the dette may stande with conscyence speccy-

Dyaloge.

s.i.

The xxvij.

ally yf he haue no thyng to paye it with/
for as it semyth yf he wylt relinquysshe his
goodes/ whiche in some lawes is called in
latyn L edere bonis that he shall not be in
prysoned/ & that is to be vnderstande most
specyally yf he be fallen in to pouertye and
not through his owne defaute. ¶ (Student)
there is no lawe in this realme that the de
fendant may in any case L edere bonis/ &
as me semyth yf there were suche a lawe it
shuld not be indifferent/ for as to the knowl
lege of hym that the money is owynge to
the dettoure myght L edere bonis/ that is to
say relinquysshe his goodes/ and yet retay
ne to hym selfe secretely great ryches. And
therfore that lawe in suche case semyth more
indifferent and ryghtouse that comytteth
suche a dettoure to the coscience of the playn
tyfe to whom the money is owynge then
that comytteth hym to the coscience of hym
that is the dettoure/ for in the dettoure some
defaute maye be assygned/ but in hym to
whom the money is owynge maye be assy
gned no defaute. ¶ (Doctoure) but yf he to
whom the dette is owynge / knoweth that
the dettoure hath no thyng to paye the dette
with/ & that he is fallen in to that pouertye

By some casualty. And not throughte his
owne defaute / doth the lawe of Englande
holde that he may with good consciencie ke
pe the dettoure styll in pryon tyll he be pay
de. ¶ Student) nay verly: but it thyngeth
more resonable to appoynt the lybertie and
the Jugement of consciencie in that case to
the dette then to the dettoure / for the cause by
fore rehersyd. And then the dette / yf he knos
þe the trouthe is as thou haste sayd bounde
in cosciēce to let hym go at lybertie though
he be not compellable thereto by the lawe.
And therfore admittynge it for this tyme /
that the lawe of Englande in this poynte
is good & iuste. I praye the that thou wylle
make answere to my questyō. ¶ Doctor)

I wyl with good wyl / and therfore as me
semyngh for as moche as it apperyth that the
sayd gyfte was made of the mere lybertie &
fre wyl of the sayd John at noke / & with
out any recompence / that therfore it can not
be other wyse taken / but that the intent of
the sayd John at noke as well at the tyme
of the sayde feoffement / as at the tyme that
he receyued agayne the sayd gyfte in the tay
le / was that yf he happenyd afterwardes
to falle in to pouertie / that he myght alyen

¶ Pyalote.

s.ii.

the sayd lande to rescue hym with/for how
maye it be thought that a man wyl so mo^r
the pondre the welthe of his heire / that he
wyl forget hym self/ and so it semyth that
not only the sayde recouerye standyth with
conscience: but also that yf he had made on
ly a feoffement of the lande that that feoffes-
ment shuld be in conscience a good barre of
the tayle / but yf the sayde feoffement & gyfte
had ben made i cōsideracyon of any recom-
pēce of moncy or for any mattymony or sur-
che other / then the feoffement of the sayde
John at noke shulde not bynde his heire / &
yf he ther suffred any recouerye therof: than
that recouerye shuld be of lyke effecte as o^r
ther recoueryes wherof we haue treatyd by
fore / and the whiche I sayd it was good to
fauour rather for theyr multytyde then for
the conscience: and the same lawe is that yf
the sone and the heire of the sayde John at
noke in case that the sayd gyfte was made
Without recompence alpen the lande for po-
uertrye after the deth of his father that reco-
uerye byndeth not but as other recoueryes
do/ for it can not be thought that the entent
of the father was that any of his heires in
tayle shulde for any necessarie dyshertye all

other heires in tayle that shulde come after
hym / but for hym selfe me thynkyth it is re-
sonable to Juge in suche maner as I haue
sayde byfore. ¶ **S**tudent) And though he
intend of the sayde John at noke whan he
made the sayde scoffement / and whan he to-
ke agayn the sayd gyfte in tayle : Were that
ys he fell in nedē that he myght alyen: yet I
suppose that he may not alyen though per-
case for the more suertye he declared his in-
tent to be suche vpon the luyernes of season:
for that intent was contrary to the gyfte that
he frelye toke vpon hym: and whan any in-
tent or condycyon is declaryd or reserued a/
gainst the state that any man maketh or ac-
cepteth: then suche an intent or condycyon is
vopde by the law as by a case that herafter
foloweth wyl appere / that is to say ys a
man make a scoffement in fee vpon condyc-
yon that the fesse shal not alyen it to any
man that condycyon is vopde / for it is incy-
dent to every state of the fee sympyle that he
that is so seasyd may alyen. And lyke as in
a fee sympyle there is incydent a powder to a/
lyen / so in a state tayle there is a secrete in-
tent understande in the gyfte / that no alye-
nacyon shal be made. And therfore though

The. xxxv.

the intent of the sayd John at noke were y^e
yf he fell in to pouertie that he myght sell: &
though he at the takynge of the gyfte open
lye declaryd his intent to be so / yet that in
tent shulde be voyde by the lawe as mese
myth / and yf it be voyde by the lawe it is
also voyde in conscience / and so the sayde
recoverye must be taken in this case to be of
the same effecte as recoveryes of other lans
des intayled be / and in none other maner.

C The. iiiii. questyon of the Student; con
cernyng recoveryes of cherytaunce
intayled. The. xxxv. Chaptie.

Student) Yf an annuyte be graunt
yd to a man to haue and to percey
ue to the graunte and to the heires
of his body of the cosers of the grauntee.
And after the grauntee suffertyth a recover
agaynst hym in a wrytte of entre by the na
me of a rent in dale of lyke sume as the an
nuyte is of with bouchers and iugement af
ter the comon course / and bothe partyes item
de that that annuyte shalbe recoveryd: Whe
ther shal that recoverie bynde the heire in the
tyme of this annuyte. **D**octor) What yf

it were a rent goynge oute of lāde of what
effect shuld the recouere be then. [Student] It shulde be then of lyke effecte as ys it we
re of lāde. [Doctor] And so it semyth
to be of this annuyte / for as me thynketh a
rent & an annuyte be of one effecte / for the
one of them shall be payde in ready money
as the other shal. [Student] that is trouth
and yet ther be many great dyuersytys by
wytt them i the law. [Doctor] I pray
the shew me som of tho dyuersities. [Stu
dent] parte I shal shew the / but I wot not
whether I can shewe the all / but fyrt thou
shalt understande that one dyuersytye is
this. Euery rent be it rent seruice / rent char
ge / or rent seke / is goynge out of lāde / but
an annuyte goth not out of any lāde / but
chargeth only the person: that is to saye the
grauntour or his heires that haue assēs by
dyscent / or the house ys it be grauntyd by
a house of Relygyon to perceyue of theyr co
fers. Also of an annuyte ther lyeth no accy
on but onlye a Wytt of annuyte agaynst
the grauntour his heires or successours / and
that Wytt of annuyte lyeth never agaynst
the pernoure: but onlye agaynst the graun
tour or his heires / but of a rent the same ac
cō

eyolls may lye as do of lande as the case re-
quyreteth: & it lyeth somtyme of rent agaynst
the tenuant of the grounde / and somtyme
agaynst the pernour of the rent / that is to
say agaynst hym that takyth the rent wrōg
fullly / and somtyme agaynst neyther: as of
a rent seruyce assyce may lye for the lordē a
gaynst the mesne and a dysseoutc / or som-
tyme agaynst the mesne only ys he dyd also
the dysseason. Also an annuyte is never ta-
ken for an asses bycause it is no fre holde
in the lawde / ne it shal not be put in execu-
cyon upon a statute merchant / statute sta-
ple ne clegit as rent may. And bycause the
sayd wryt of entrelay not i this case of this
annuyte. And that it can not be intēdyd in
the lawde to be the same annuyte / though it
be of lyke sume with the annuyte: ne though
the partyes assentyd and ment to haue the
same annuyte recoueryd by the sayd wrytte
of entrelay therefore the sayd recouerye is boys-
de in lawde and consciencē / but ys suchē a re-
couerye be had of rent with a vouchē ouer
then it shall be taken to be of lyke effecte as
recoueryes of landes be in suchē maner as
we haue treatyd of byfore.

chapytre.

Folio. lxxvii.

Concernyng the Student
concernyng tayled landes.

The. v.ij. Chapytre.



Student) Yf landes be
gyuen to a man and to
his wyfe in the name of
his ioyntoure by the fa-
ther of the husbonde to
haue & to holde to them
and to the heyrz of theyz
two bodyes begotten / and after they haue
yssue and the husbonde dyeth: and the wyfe
alenyng the lande / and agaynst the statut
of. vi. h. vii. sufferyng a recoueryc therof to
be had agaynst her to the use of the byer / &
after her sone and heire apparaunt / that is
heire to the tayle releasyng to the recouerers
by syne and dyeth hauynge a brother on sy-
ue / & after the mother dyeth who hath ryght
to that lande the byer or the brother of hym
that releasyd . **D**octoure) What is thyne
oppynyon therin / I praye the shewe me.
Student) me semyng that the byer hathe
ryght / for by the sayd statut made in the. vi.
yeare of kyng Henry the. vii. amonge other
thynges it is enacted that yf any woman/
Dyalogt.

t.i.

The xxxvi.

Whiche hathelandes of the gyfte of her hus-
bonde / or of the gyfte of any of the aunces-
stourcs of the husbonde / suffre any recouer-
tye therof agaynst her by couyn / that then
suche recouertye shall be voyde / and that it
shal be lawfull to hym that shuld haue the
lande after the dethc of the wwoman to ente
and it to holde as in his fyfste ryght / prouy-
ded alway that that statute shall not exten-
de wher he that shuld haue the lande after
the dethc of the wwoman is agreeable to any suc-
che alyenacyon or recouertye: so that / that ac-
tgement be of recorde. And for as moche as
the heire in this case agreed to the sayd recouer-
tye by fyne / Whiche is one of the hyest res-
cordes in the lawe / it semyth that the byer
hath ryght agaynst that heire that agreed
and agaynst all that shall be heires of the
cavle / and that not only by the sayd recouer-
tye / but also by the sayd statute wherby the
sayd recouertye with assent of the heire is af-
fermyd. ¶ Doctor / though the byer in this
case haue ryght durynge the lyfe of the heire
that releasyd / yet neuerthelesse after his
dethc his heire as it semyth maye lawfullly
entre / for the agremēt wherof the statut spe-
yth must as I suppose eyther be had by fos-

chapytre. folio. lxxviii.

te the recouerye/or els at the tyme of the reco
uerye:for ys a tylle by reason of the sayd sta
tute he ones deuolute to the heire in the tayl
le/then that right as it semyth can not be ex
tynct nor put awaie by the only fyne of the
heire/no more than ys he had dyed and the
nexte heire to hym had releaseyd to the bret
by fyne/in whiche case that release couldc
not extyncte the ryght of the tayle/nor the
ryght of entre that is gyuen by the statute/
& so as me semyth his nexte heire may ther
fore entre.**C** Student)as I perceyue all thy
dowte is in this case bycause the assent of
the heire was after the recouerye/for ys it
hadde ben at the tyme of the recouerye as ys
the heire had ben touchyd to warrantye in
the same recouerye and he had enteryd:and
therupon the Jugement had be gyuen thou
agreest wel/that that recouerye shuld haue
auoydyd the tayle for euer.**C** Doctor)that
is truc for it is in the expresse wordes of the
statute/but when the assent is after the re
couerye/then me thynketh it is not so/ne
that the ryght of the fyrist tayle/which was
reuyued by the sayd statute shall not be ex
tyncte by his fyne/no more then it shall in
other tayles.**C** Student)I wyl be aduys
Dyaloge.

sed vpon thy oppynyon in this mater / but
 yet one thyng wylde I moue ferther vpon
 this statute and that is this. Some say that
 by this statut all other recoueryes that haue
 ben had ouer and besyde these recoueryes of
 Joynntures be affirmyd / for they say that
 syth the Parlyament at the makyng of this
 statute / knew well that many other recou/
 eryes were ther used / it had to defete tayses
 and that it was lyke that they wold so con/
 tynue / whiche neuertheles the Parlyament
 dyde not prophybyte for the tyme to come as
 it dyde the sayde recoueryes of Joynntures:
 that it is therfore to suppose yf they thought
 that they shulde stande with lawe and con/
 scyence: but bycause Joynntures were made
 rather for the sauynge of the Inheritaunce
 of the husbonde / then to dystroy the Inher/
 itaunce / they saye that the Parlyament tho/
 ught and adiugyd the alyenacions and re/
 coueryes of such Joynntures to be agaynst
 the lawe and coscyence and not the alyena/
 cyon of other lades entayled / for yf they had
 they say / that the Parlyament wylde haue
 aduoyded recoueryes of tayled lades gene/
 rally as well as it dyd of recoueryes of ioyn/
 tures. [Doctor] as to that oppynyon I

chapytte. folio. lxxv.

Wyll ans^werc the thus for this tyme, that though that the makers of the sayd estatute only put away recoueryes of ioynitous / & not other recoueryes that yet it can not be taken therfore that they entent was that the other recoueryes shuld stande good and per syte / for they speke then only of ioynitous bycause there was no complaynte made in the Parlyament at that tyme / but agaynst recoueryes had of ioynitous / and therfore it semyth that they intendyd no thyng concernyng other recoueryes: but y^e they shuld be of the same effecte as they were byfore & no other wyse. And that Wyll appere more playnlye thus / though the makers of the sayd estatute intendyd to put away & ad^s null such recoueryes as shulde be made of ioynitous after a certayne daye lymytted in the statute / that yet they entendyd not to aduoyde ne affirme such recoueryes of ioynitous as were passed byfore that tyme: & y^e they intendyd not to auoyde ne affirme the recoueryes had of ioynitous byfore y^e tyme: then howe can it be taken that they intedyd to put away or affirme other recoueryes that were passed byfore that tyme and not of ioynitous / that wolde not affirme ne

Dyaloge.

c.iii.

The. xxxvii.

put a way recoueryes passed of ioynoures
byfore that tyme. And so as it semyth they
intēdyd to spare the multytude of them that
were passyd of bothe & not to conforte any
to take them after that tyme. ¶ Studēt) I
am cōtent thy oppynyon stande for this tyme
and I wylle aske the another questyon.

¶ The. vi. questyon of the Student;
concernyng taylē landes.

The. xxvii. ¶ happyte.

Student) Yf tenant in tayle
be dyssafyd / & dye & an
Auncestre collaterall to the
heyre i the tayle release with
a warrantye & dye / and the
warrantye descedyth upon the heyre in the
tayle / whether is he therby barred in consci-
ence / as he is in the law. ¶ Doctor) Bycau-
se oure pryncypall intent at this tyme is to
speke of recoueryes and not of warranties:
and also bycause it hathe ben of longe tyme
taken for a pryncipall maym of the lawde
that it shulde be a barre to the heyre as well
that claymeth by a fee simple as by a ffe
tayly / and for that also that it was not put

chapytre. folio. xxvii.

a waye by the sayd statute of Westm. the ii.
Whiche ordyned the tayle I wyl not at
this tyme make the answere therin / but
wyl take a respyte to be aduysed. ¶ Thus
dient then I pray the yet or we depte shew me
one what was the most pryncipall cause yt
moued the to moue this questyon of recouer
yng had of tayled lades. ¶ Doctor, This
moued me therto / I haue perceyued many
tymes that there be many dyuers oppynyōs
of thos recouerties: Whether they stāde with
consciencē or not / and that it is to dō wte
that many persones ren in to offence of con
sciencē therby. And therfore I thoughte to
fese thy mynde i them whether I couldē per
ceyne that it were clere / that they setyng to
breke the tayle in laude & consciencē / or that
it were clerely agaynst consciencē so to bre
ke the tayle / or that it were a mater in dō wte /
& yf it apperyd a mater in dō wte / or that
it apperyd that the mater were vsed clerely
agaynst consciencē / then I thoughte to do
somwhat to make the mater appere as it is
to the intent: that they that haue the rewele &
the charge ouer the people as wel the spyp
tuall men as temporall men / shulde the ra
ther endeuer them to se it reformyd for the co

The xxvii.

mon Welch of the people / as well in body
as in soule . For when any thyng is vsed
to the dyspleasure of god / it hurtyth not on
lyc the body but also the soule . And tempo
rall redres haue not onlyc cure of the bo
dies / but also of the soules / & shall answe
re for them yf they petysshē in theyr defaute
& bycause it semyth by the more apparaunt
reasōn that the tayles be not broken ne ful
ly auoydyd by the sayde recouertes / & that
yet neuertheles the great multytude of them
that be passed is ryght moche to be pōderyd
Therefore it were very good to prophabyte
theym for tym to come / to put awaie su
che ambiguyties & dowtcs as ryse nowe
by accusyon of the sayde recouertes / and so
they be but as snares to deceyue the people /
and so wyl they be as songe as they be suf
feryd to contynue . And me thynketh very
ly that it were therfore ryght expedyet that
tayled landes shulde from hensforth cyther
be made so stronge in the lade that the tay
le shulde not be broken by recouerte fyne
With proclamacyon collaterall warrantye
nor other wyse / or els that all tayles shulde
be made fee syngle / so that euery man that
lyste to sell his lande myght sellit by his

chapytre. folio. xxviii.

bare feoffement and without any scrapple or
troue of cōscyence: and then there shuld not
be so great expences i the lawde: nor so great
variaunce amōge the people: ne yet so great
offence of conscyence as there is nowde in
many persons. ¶ Studēt) Veryly me thynt
beth that thy oppynyon is ryght good and
charytalbe i this behalfe. And that the red-
ders be bounde in conscyence to loke wel
Upon it to se it reformyd and brought in to
good ordre. And Veryly by that thou haste
sayde therin thou haste brought me in to re-
membraunce that there be dyuerselyke sna-
res concetnyng **S**pyrytuall matyers sus-
pended amonge the people / wherby I do wote
that many **S**pyrytuall redlers be in great
offence agaynst god. As it is of that poynt
þ' the spyrtyual men haue spoken so moche
of that preestes shulde not be put to answe-
re byfore lay men specyally of felonyes &
murders / and of the statute of. þ. v. E. iii.
the. iii. chapytre / wherit is sayd that a pro-
hypyson shall lye / wherit a man is sued in
the **S**pyrytuall courte for tythe of wood/
that is aboue the age of. xx. yere / by the na-
me of **H**ilua cedula as it hath done byfore/
and they haue in open **H**ermons and in dy-
Dyaloge.

uerse oþter open cõmuniycacyons / & counþ
saylles caused it to be openly notesyed and
knowen that they shuld be al accursed that
put preastes to answe / or that maynteygþ
ne the sayd estatute / or any other lyke to it.
And after þhen they haue ryght wch perþ
cuyued that notwithstanding all that they
haue done therin / it hath ben vscd in the saþ
me poyntes through all the Realme in lyke
maner as it was before. Then they haue
syttē stylle and lette the mater passe / and so
þhen they haue brought many persones in
great daunger / but moste speyallye them
that haue gyuen credence to theyr sayinge /
and yet by reason of the olde custome haue
done as they dyd before / then there they haþ
ue lefte them / but verly it is to feare that
there is to them selfe ryght great offēce therþ
by / that is for to say to se so many iþo great
daunger as they saye they be. And to do no
more to bryngē them out of it then they haþ
ue done / for yf it be trewe as they saye / they
ought to stycke to it wþth effect in all charþ
tēc tyll it were reformyd: And yf it be not
as they say then they haue caused many to
offende that haue gyuen credence to theym /
and yet contrarie to theyr owne conþcience

chapytre. folio. xviii.

do as they dyd byfore / & that percase shulde
not haue offendyd yf such sayings had not
ben. And so it semyth that they haue in the
se matyres done eyther to moche or to lytel.
And I beseche all myghtye god that some
good man may so call vpon all these ma-
tyers that we haue nowe comonyd of / so
that they that be in Auctorite maye som-
what pondre them / and to ordre them in su-
che maner that offence of consciencie growe
not so lyghtly therby hereafter as it hath do-
ne in tyme past. And verly he that on the
Crosse kneud the pryce of manes soule wyl
hereafter aske a right straute accōpte of teud
lers / for every soule that is vnder them and
that shall perisshe thorough theyr defaulte.

A ddycyon.

CThus I haue shewed unto the in this
lytle Dyaloge howe the lawe of Englan-
de is grounded vpon the lawe of treason /
the lawe of god / the generall customes of
the realme / and vpon certayne prynciples
that be called maximes vpon the partycul-
ar customes vsyd in dyurse Lyties & coun-
tryes / and vpon statutes whiche haue ben
made in dyuers Parlyamentes by our so-
ueraygne lord the kynge and his progenys

Dyaloge.

ii.ii.

The xxxii.chappyte.

toutes / and by the Lordes spyrituall and temporall / and all the Comons of the reialme . And I haue also shewed the in the tyneth chappyte of this boke / vnder what maner the sayd general customes and maymyes of the lawde may be prouyd and affer myd ys they were denyed / and dyuers other thynges be conteyned in this present Dyaloge / Whiche Wyll appere in the table / that is in the latter ende of the boke / as to the redets Wyll appere . And in the ende of the sayde dyaloge I haue at thy desyre shewed the my conceypte concernyng recoueryes of Tayled landes / and thou haste vpon the sayd recoueryes shewed me thyne oppynyson . And I beseche our lorde set them shoute eyne in a good clere waye / for surelye it Wyll be ryght expedyent for the well ordryng of Conscience in many personnes that they be so . And thus god of peas & loue be alwaye with vs . Amen .

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Here endeth the fyfthe Dyaloge in Englyssh / with newe Addycyons betwyx
a Doctour of Dyuynyte / and a Student in the lawes of Englaund.

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Imprynted by me Robert wyer
dwellynge at the sygne of saynt
John Euangelyste, in saynt
Martyns parysche/besyde
Charyngcrosse, in the bys
shop of norwych rentes.



ROBERT WYER

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